



United Nations

Committee of Experts on International Cooperation in Tax Matters

**Report on the eighteenth session
(23–26 April 2019)**

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Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Chapter I

Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2019/207, the eighteenth session of the Committee of Experts on International Cooperation in Tax Matters was held in New York from 23 to 26 April 2019.
2. The eighteenth session was attended by 22 Committee members and 148 observers.
3. The provisional agenda and organization of work for the eighteenth session (E/C.18/2019/1) was adopted by the Committee, as follows:
 1. Opening of the session by the Co-Chairs.
 2. Adoption of the agenda and organization of work.
 3. Discussion of substantive issues related to international cooperation in tax matters:
 - (a) Procedural issues for the Committee;
 - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries, including:
 - (i) Taxation of royalties;
 - (ii) Taxation of collective investment vehicles.
 - (c) Tax and the Sustainable Development Goals: follow-up report;
 - (d) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
 - (e) Update of the Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries;
 - (f) Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
 - (g) Dispute avoidance and resolution;
 - (h) Capacity-building;
 - (i) Environmental tax issues;
 - (j) Tax consequences of the digitalized economy – issues of relevance for developing countries;
 - (k) Taxation of development projects;
 - (l) Relationship of tax treaties with trade and investment treaties;
 - (m) Other matters for consideration.
 4. Provisional agenda for the nineteenth session of the Committee.
 5. Adoption of the report of the Committee on its eighteenth session.

Chapter II

Organization of the session

Opening of the eighteenth session and adoption of the agenda

4. On 23 April 2019, the eighteenth session of the Committee of Experts on International Cooperation in Tax Matters was opened by the Committee Co-Chairs, Carmel Peters and Eric Mensah. The Director of the Financing for Sustainable Development Office of the Department of Economic and Social Affairs, Navid Hanif, gave welcoming remarks on behalf of the Secretary-General.

5. In his remarks, Mr. Hanif described the work of the Committee in a larger sustainable development context, while pointing out various trends that were impeding efforts towards achieving the Sustainable Development Goals. He cited, among others, uneven growth, rising debt levels, financial volatility and global trade tensions, as well as climate change. He noted the importance of effective tax rules and administration, as well as the need for improved tax cooperation to increase domestic resource mobilization for the funding of sustainable development.

6. Mr. Hanif drew attention to the continuing and important role played by the Committee on key frontier issues for domestic resource mobilization, such as the taxation of the digital economy. That topic continued to pose challenges for the application of traditional rules to situations not well adapted to those rules. He urged the Committee to remain at the forefront of new thinking in such areas.

7. In reviewing the agenda for the session, Mr. Hanif emphasized the nexus between taxation and the Sustainable Development Goals, underscoring the role of taxation beyond resource mobilization. He noted how taxation could help to reduce inequality and promote other policies and behaviours in support of the 2030 Agenda for Sustainable Development and Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

8. Mr. Hanif highlighted some of the capacity development activities conducted by the Financing for Sustainable Development Office that drew upon the products and outcomes of the work of the Committee. He pledged the continued support of the Secretariat for the Committee and the activities of its Subcommittees. Mr. Hanif indicated that the Financing for Sustainable Development Office continued to seek financial contributions to increase resourcing for the work of the Committee (including the Subcommittees) and requested Committee members to play an advocacy role in the search for new resources. He mentioned the current multi-donor project to, inter alia, support more inclusive and broad-based country engagement in international tax discussions and institutions, as well as to enhance and strengthen the impact of capacity development efforts aimed at disseminating and operationalizing the Committee's work at the country level.

9. Mr. Hanif also mentioned the engagement at the Secretariat level with other international and regional organizations, including the collaboration among the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank Group through the Platform for Collaboration on Tax. The activities of the Platform ranged from capacity-building to producing toolkits on policy and administrative issues, undertaken within the broader framework of tax and the Sustainable Development Goals.

10. The Co-Chair, Mr. Mensah, thanked Mr. Hanif for his remarks and invited Committee members and participants to reflect on those remarks and, where necessary, to engage with the secretariat for further comments or clarification.

Chapter III

Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Procedural issues for the Committee

11. In a closed session, the Coordinator of the Subcommittee on Practices and Procedures, Stephanie Smith, presented a conference room paper on practices and working methods for the approval of the Committee based on, and aligned with, the rules of procedure of the Economic and Social Council, and drawing on the comments and discussions at the previous sessions of the Committee, as well as input from the secretariat.

12. Following a discussion, the proposed practices and working methods were approved by the Committee with minor changes and would be made public on the Committee's website. It was decided that the Subcommittee would continue its work by preparing a paper on options for dealing with minority opinions in the commentaries on the United Nations Model Double Taxation Convention between Developed and Developing Countries, for consideration by the Committee at its nineteenth session. That work would not require a change of mandate.

B. Issues related to the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

13. The Coordinator of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries, Carmel Peters, explained that, although three conference room papers had been prepared in connection with agenda item 3 (b), the discussion would focus on the paper on the taxation of capital gains (E/C.18/2019/CRP.9).¹

14. Rajat Bansal, the author of that paper, explained that it included a proposal that would allow the source taxation of indirect transfers. He added that the issue was not whether gains from indirect transfers should be taxed, which was essentially a matter of domestic law, but rather how tax treaties should accommodate a country's decision to tax such transfers. He presented the proposal put forward in his paper in detail, which was based mainly on the provision already found in paragraph 18 of the commentary on article 13 of the United Nations Model Convention. He said that while some countries, such as China, used general anti-abuse rules or doctrines to tax gains from indirect transfers, that approach was limited in scope as it only covered abusive transactions. He noted that article 13 (4), which was included in both the United Nations and the OECD Model Conventions and appeared acceptable, allowed the taxation of indirect transfers of immovable property, and that there was a need for a similar rule to cover gains from the transfer of other types of assets.

15. In response to a question, Mr. Bansal clarified that the proposal included in his paper was to include in article 13 of the United Nations Model Convention a slightly amended version of the provision found in paragraph 18 of the commentary. He acknowledged that the effect of that proposal would be to allow the source taxation not only of gains from indirect transfers, but also of gains on the alienation of all assets not covered by the current provisions of paragraphs 1 to 5 of the article. In that regard, he added that the proposal would be beneficial from the point of view of conferring taxing rights on States in which such gains arose with a view to boosting

¹ The documents of the eighteenth session of the Committee are available at www.un.org/esa/ffd/events/event/tax-eighteenth-session.html.

domestic resource mobilization in developing countries and thereby achieving the Sustainable Development Goals. He referred to the absence of any justification in the commentaries of either the OECD Model Convention or the United Nations Model Convention for providing exclusive taxing rights on capital gains arising from the transfer of residuary assets to the country of residence.

16. One Committee member explained the position of her country, which preferred to restrict the source taxation of gains from indirect transfers to cases of abuse. She expressed the view that going beyond such cases might have an impact on foreign investment.

17. Another member of the Committee stated that the proposal included in the paper, which went well beyond indirect transfers, raised important policy issues on which more work was needed. The proposal would allow the source taxation of gains on the alienation of almost all types of assets even though the location of many of those could easily be changed. The toolkit on offshore indirect transfers prepared by the Platform for Collaboration on Tax had focused on indirect transfers of immovable property, rights in the extractive sector and some telecommunications licences. The member suggested that one alternative might be to restrict the scope of the proposal to the indirect transfer of such assets.

18. Concerns were expressed by other members along similar policy lines or regarding the administrability of the proposed rule. Some interventions were also made opposing the proposed approach of leaving it to each State to determine in its domestic law whether a gain arises in that State since such a rule would increase the risks of double taxation and would undermine certainty.

19. While some observers expressed support for the proposed rule, others shared the concerns expressed by some of the Committee members. One observer noted that the proposal included in the paper would render the provisions of article 13, except for article 13 (3), redundant. The secretariat expressed support for that view. One observer questioned why there should be hesitation in introducing such a provision in the United Nations Model Convention, which supports source country taxing rights.

20. Some interventions noted that the proposal raised various policy issues. One was whether article 13 should allow the source taxation of all capital gains arising in a State. If so, a related issue was how to determine whether a gain arose in a State (for example, by reference to domestic law or according to a treaty source rule). Another policy issue was whether article 13 should be amended to allow the source taxation of a larger category of indirect transfers and, if so, with respect to which types of assets (for example, immovable property and some intangibles such as telecommunications licences – a suggestion for which there seemed to be wide support).

21. Another policy question related to the previous one was whether there should be some indirect ownership threshold below which source taxation of indirect transfers would not be allowed, similar to the provisions found in the domestic law of some countries or to what was included in article 13 (4), which applied only to alienation of shares or other interests that derived more than 50 per cent of their value directly or indirectly from immovable property situated in a State.

22. In Mr. Bansal's response to the concerns raised, he observed that the alleged administrative difficulties and risks of double taxation already existed with respect to article 13 (4). However, he said, no major problem had been noted or reported in that regard. As such, there did not, in his view, seem to be any reason for concern. He gave an example of implementation in his country. He further stated that, in any case, implementation difficulties were essentially a domestic law issue for the country

choosing to introduce such provisions and not an issue relevant to deciding to introduce a treaty provision.

23. As to the sourcing rule aspect in his proposal of leaving it to the State to determine in domestic law where the gain from indirect transfers arose, Mr. Bansal stated that the practice in that regard in domestic laws varied and that it would be difficult to have a uniform rule in the proposed treaty provision for offshore indirect transfers, unlike the case of interest where the design of a sourcing rule was simple. He gave one illustration of a domestic law provision deeming gain from an indirect transfer to arise in a State if substantial value of the asset indirectly transferred was derived from assets situated in that State. He considered that the suggestion in the existing commentary to leave the sourcing rule to be decided through bilateral negotiations would lead to ambiguity. Regarding concerns that the proposal would have a wider application than capital gains on just offshore indirect transfers or indirect transfers more generally, his response was that the majority of Committee members were already in favour of such a rule for a residuary class of assets and that was how it was reflected in existing paragraph 18 of the commentary. In any case, he added, the matter could be considered for offshore indirect transfers and other residuary assets separately and he offered to draft a new proposal, taking into account the points raised in the discussion.

24. The secretariat suggested that the next step should be the preparation of a note by the secretariat that would address the various policy issues that had been raised during the discussion, as well as the advantages and disadvantages of different solutions to each of the issues. It was therefore proposed by the Coordinator of the Subcommittee that such a policy note should be prepared by the secretariat for discussion at the next meeting of the Subcommittee, with a paper to be presented for consideration at the nineteenth session of the Committee. There was no objection to that approach, which did not preclude the preparation of other papers on the subject.

C. Tax and the Sustainable Development Goals: follow-up report

25. The secretariat presented a note entitled “Follow-up note on the role of taxation and domestic resource mobilization in achieving the Sustainable Development Goals” (E/C.18/2019/2). Speaking on behalf of the secretariat, Harry Tonino outlined the Secretary-General’s strategy for financing the 2030 Agenda and its main objectives, noting the development of a road map aimed at identifying priorities, target outcomes and key actions to implement it. Several key priorities were identified in the strategy, including international tax cooperation, tax systems and expenditure frameworks that were responsive to the Sustainable Development Goals, and coordinated action to curb tax evasion and avoidance, as well as illicit financial flows.

26. Mr. Tonino recalled that, at the seventeenth session of the Committee, the secretariat had presented a conference room paper entitled “The role of taxation and domestic resource mobilization in the implementation of the Sustainable Development Goals” (E/C.18/2018/CRP.19),² in which it had provided an overview of the linkages between the Committee’s work and the implementation of the Sustainable Development Goals and the Addis Ababa Action Agenda. Following the presentation of that paper, the Committee had decided to establish a focus group on taxation and the Sustainable Development Goals to advise and work with the secretariat on further defining, framing and communicating the links between the mandate of the Committee and sustainable development; as well as to promote and

² The documents of the seventeenth session of the Committee are available at www.un.org/esa/ffd/events/event/seventeenth-session-tax.html.

facilitate further engagement of the Committee in sustainable development-related strategies and initiatives of the United Nations.

27. Elena Belletti, also speaking on behalf of the secretariat, then provided the Committee with an overview of the content of the follow-up note, which was aimed at further exploring the link between taxation and the Sustainable Development Goals in three areas: (a) environmental protection; (b) the informal economy; and (c) gender equality. For each of the three topics, the paper outlined the broader context of the Sustainable Development Goals; the key questions that the Committee might consider in approaching the subjects; and the status of the current discussion at the international level. The paper further identified the key challenges faced by developing countries in using fiscal policies to promote specific Goals: (a) the development of coherent, progressive tax systems and redistributing income to vulnerable groups, including women; (b) the employment of fiscal systems to encourage sustainable production and consumption patterns and environmental protection; and (c) the promotion of simple and effective tax administration, thereby encouraging tax compliance. Ms. Belletti noted that the Committee's practical guidance would be a key tool in further supporting developing countries in overcoming those challenges. In addition, she highlighted that innovative solutions might be proposed for countries in special situations.

28. Committee members and participants welcomed the follow-up note, and the Co-Chair encouraged them to focus their discussions on further identifying the practical implications of the nexus between tax and the Sustainable Development Goals for the Committee's work. Many members supported the continuation of analysis on taxation and environmental protection (including through the relevant Subcommittee, and in cooperation with the Subcommittee on extractive industries); on gender and taxation; and on taxation of the informal economy. One member highlighted the importance of ensuring that both tax and expenditure policies be developed in a coherent framework, and another member noted the urgent need for such policies, although concrete results might be seen only in the medium term. One participant urged the Committee to focus on providing practical guidance, which would be the most relevant for developing countries.

29. Several participants shared their country experiences on the three topics and invited the secretariat to compile those experiences for the benefit of other countries. The Committee requested the secretariat to work with the focus group on tax and the Sustainable Development Goals to identify priority areas and to develop a road map, in particular on environmental taxation, for future work.

D. Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

30. The Co-Coordinator of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, Ingela Willfors and Stig Sollund, reported on the progress made since the previous meeting and on the next steps for the work of the Subcommittee, referring to the conference room paper on the update of the United Nations Practical Manual on Transfer Pricing for Developing Countries (E/C.18/2019/CRP.1).

31. First, Ms. Willfors recalled the mandate of the Subcommittee and its key work streams. She reported on the Subcommittee meeting held in February 2019 in Vienna, hosted by the Ministry of Finance of Austria, with the assistance of the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business. She noted that, in addition to the chapter on financial transactions, the topics discussed during that meeting included: drafts on the transactional profit split

method and comparability issues; the updating and revision of chapter C of the Manual; the presentation of a general update on some chapters to render them more readable; and the relationship between transfer pricing and customs valuation.

32. Monique van Herksen, a member of the Subcommittee, presented the draft of a new chapter on financial transactions, which addressed the importance of corporate financing decisions within multinational groups. The draft chapter included a detailed discussion of intra-group loans and financial guarantees. Ms. van Herksen reported that the chapter currently included 17 draft examples. As those examples needed to be further refined at the Subcommittee level, comment was not sought on them at the eighteenth session.

33. A discussion on the tax advantages of debt and the role of the capital structure of a company in determining the pricing of financial instruments was also included in the chapter. She explained that a life-cycle approach and three perspectives on the application of the arm's length principle were part of the consideration when pricing financial transactions.

34. Ms. Willfors presented the work of the Subcommittee on a substantial revision to the guidance contained in the Manual on the transactional profit split method. She mentioned a new structure for the chapter and that the focus was on taking into account the work done in the context of the Inclusive Framework on Base Erosion and Profit Shifting, while providing more practical examples. She noted that the revision would provide further guidance on when and how to use the profit split method. The chapter would also include new examples that were currently under development.

35. It was indicated that a draft revision of the chapter on comparability analysis, including further examples and suggestions to address the lack of comparables, was expected to be ready for consideration by the Committee at its nineteenth session. A main purpose of the updated guidance on comparability was to seek consistency between the Manual and the Platform for Collaboration on Tax toolkit on comparability.

36. Mr. Sollund noted that the general review and revision of the Manual, which was also under way, was aimed at eliminating any overlaps and repetitions, improving the natural flow of themes and issues, and improving the practicability of the Manual. Those were all factors identified during United Nations capacity-building events on transfer pricing.

37. Mr. Sollund provided an update on the status of the work on centralized procurement functions, which had been identified as a pressing problem for tax administrations in developing countries during a workshop held in Swaziland in December 2017. He reported that the Subcommittee planned to provide broader and more in-depth analysis and guidance on centralized procurement functions, as well as on centralized sales functions. He then noted that the Subcommittee would work on updating and reorganizing specific chapters in the Manual, including those on: (a) transfer pricing in a global economy; (b) the general legal environment and establishing and updating transfer pricing regimes; (c) audits and risk assessment; and (d) establishing transfer pricing capability in developing countries.

38. Mr. Sollund welcomed the valuable contributions received in 2018 from the United States Council for International Business and the Base Erosion and Profit Shifting Monitoring Group advising the Subcommittee to focus its work on seeking greater simplification, standardization and tax certainty. Those aspects would be discussed at the next meeting of the Subcommittee.

39. The Co-Coordinator invited written comments on the work of the Subcommittee until 1 June. It was also reported that the Subcommittee would be

holding its next meeting in Amsterdam from 2 to 4 July 2019, hosted by the Ministry of Finance of the Netherlands, with the support of the International Bureau of Fiscal Documentation. The participants at the meeting would discuss new and revised drafts for the Manual, which would subsequently be presented for consideration by the Committee at its nineteenth session.

40. Several Committee members and other participants took the floor to support, and stress the importance of, the Subcommittee's work, in particular for developing countries.

E. Update of the Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries

41. Introducing the work of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, the Co-Coordinator of the Subcommittee, Eric Mensah, referred to the conference room paper prepared on the update of the Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries (E/C.18/2019/CRP.11). He indicated that discussion at the session would be focused on the first draft of a chapter on the treatment of subcontractors and outlines of two other chapters, one on production-sharing contracts and the other on financial transactions. The three documents had been reviewed by the Subcommittee during its meeting held in Da Nang, Viet Nam, in March 2019, hosted by the General Department of Taxation of Viet Nam.

Subcontractors

42. Hafiz Choudhury, a Subcommittee member, introduced the subject by putting the chapter on subcontractors into context and pointing out the difference between subcontractors in the extractive industries and those in services in other industries. Referring to the general organization of the chapter, he indicated that the first section would serve as an overview with a description of the scope of the chapter and definitions of the technical terms used. The second section would be devoted to the role of subcontractors in the extractive industries; and the third would describe the life cycle of projects in the extractive industries and the types of subcontractors involved at each stage. The fourth and subsequent sections would address tax issues and special challenges related to service providers and subcontractors in the extractive industries.

43. Mr. Choudhury further explained that a company operating in the extractive industries might realize a loss while its subcontractor makes a profit, which should therefore be taxed. The use of subcontractors in the extractive industries might enable small companies in developing countries to also compete in the market as they could subcontract services requiring expertise or technologies that they might not have.

44. The chapter on subcontractors was designed to be based mostly on case studies. Among the issues to be discussed were value added tax (VAT) and permanent establishment issues, which would be dealt with in accordance with the transfer pricing principles contained in the United Nations Practical Manual on Transfer Pricing for Developing Countries, in consultation with the relevant Subcommittee. In concluding his presentation, Mr. Choudhury indicated that drafts of the first to third sections were ready for review, but that the fourth section onwards was still a work in progress. He indicated that the plan was to have the chapter ready for further consideration by the Committee at its nineteenth session, with a view to its being subject to a final review and adopted at the twentieth session, to be held in 2020.

45. In response to comments received from the floor on the tax treatment of subcontractors for affiliated companies, it was reaffirmed that the Handbook, and the chapter on subcontractors in particular, would follow the United Nations Practical Manual on Transfer Pricing for Developing Countries on all issues related to transfer pricing. Regarding case studies, it was recommended to have the right mix of case studies from the perspective of the private sector and from government viewpoints. Committee members were requested to assist the Subcommittee in providing case studies from the government side. A report from the Economic Commission for Africa on tax design in the mining sector in six African countries in 2016–2017 was cited as a possible source of government case studies.

Production-sharing contracts

46. An outline of the chapter on production-sharing contracts was presented to the Committee by its lead author, Álvaro de Juan Ledesma. He indicated there were two main types of contracts in the extractive industries, namely production-sharing contracts and concession contracts, often with no clear-cut distinction between the two, as in some cases a contract could be a combination of the two types.

47. While concession contracts usually provided more flexibility for the operator who owned the production, production-sharing contracts allowed the Government to retain the title to resources. The choice between the two depended on, among other factors, geological and political risks, Mr. de Juan Ledesma explained.

48. A general structure of the revenue flow for production-sharing contracts and how such revenue was shared and taxed was presented, with an emphasis on how the pricing for the production was determined, especially in the oil and gas industry. Country case studies on Brazil, Nigeria and the Russian Federation would be used for illustration in the chapter.

49. Participants discussed several aspects of taxation in connection with production-sharing contracts, in particular how to set a benchmark price for the evaluation of the shared production, recognizing that there might be several ways of setting such a price.

Financial transactions in the extractive industries

50. An outline of the chapter on financial transactions in the extractive industries was also presented to the Committee by Mr. de Juan Ledesma. Describing some of the particularities of the extractive industries with regard to financial transactions, he indicated that in many places the chapter would cross-reference transfer pricing issues, while focusing on features relating only to the extractive industries.

51. He remarked that, in general, the mining and oil and gas industries dealt with very high risk as the substantial cost related to exploration might yield no production. In the oil and gas industry, typically 25 per cent or less of exploration activities led to production. That being the case, he noted, it was easy to understand why most traditional financial institutions did not lend money for those types of activities. Operators would generally use their own capital and would devise other financial arrangements involving cost sharing with new partners to share the risk. All those arrangements, including cases of what were termed “farm-in” or “farm-out” arrangements, would be explained with clear descriptions of tax treatment based on case studies. Some of the downstream activities, such as marketing or refining, which could be financed through loans, would also be detailed.

52. Following the presentation, Mr. Mensah thanked the Committee and other participants for the comments made, which would allow the Subcommittee to prepare the drafts of those chapters for the Committee to review at its next session. The

Committee thanked the Subcommittee for the work it had done and for the progress report it had prepared.

F. Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

53. The Coordinator of the Subcommittee on Tax Treaty Negotiation, Patricia Mongkhonvanit, briefly described the mandate and work done by the Subcommittee that resulted in the final revised version of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2019/CRP.5), which the Committee was invited to approve. Jacques Sasseville, of the secretariat, then described the main changes that had been made to the previous draft version of the Manual (E/C.18/2018/CRP.11) as a result of the discussion at the seventeenth session, held in Geneva in October 2018, and of written comments subsequently received from observers.

54. Members of the Committee thanked the Subcommittee for its work and expressed support for the approval of the revised Manual. The Chair concluded that the Committee had approved the revised Manual.

55. In her closing remarks, the Coordinator of the Subcommittee thanked the members of the Subcommittee for their contribution, as well as those whose financial contribution had made it possible for members from developing countries to participate in the meeting of the Subcommittee that was held in Paris in September 2018 and OECD, which had provided a room for that meeting.

G. Dispute avoidance and resolution

56. The Co-Coordinators of the Subcommittee on Dispute Avoidance and Resolution, George Obell and Cezary Krysiak, were invited to introduce the agenda item on tax dispute avoidance and resolution. Mr. Krysiak presented the two chapters of the proposed handbook on tax dispute avoidance and resolution, which the Committee was invited to discuss:

- Chapter 5 on the mutual agreement procedure (E/C.18/2019/CRP.3) had been discussed previously by the Committee at its seventeenth session. On the basis of the discussion at that meeting and on written comments received on earlier versions, the chapter had been finalized by the Subcommittee at its meeting held in London from 13 to 15 March 2019, hosted by Her Majesty's Revenue and Customs of the United Kingdom, and was therefore being presented for final discussion and approval.
- Chapter 3 on domestic dispute resolution mechanisms (E/C.18/2019/CRP.2) was presented to the Committee for discussion. At its meeting in London, the Subcommittee had focused primarily on the structure of that chapter and the Committee was therefore invited to focus its attention on the table of contents of the chapter.

57. Mr. Krysiak indicated that the Subcommittee intended to finalize chapter 3 at its next meeting, which would be hosted by the Ministry of Finance of Poland in Warsaw from 1 to 3 July 2019.

58. The discussion on chapter 5 focused on three comments by a Committee member:

- **Footnote 44.** The member requested the deletion of the second sentence of the footnote, which explained the benefit of allowing the presentation of a mutual

agreement procedure request to a State other than the State of residence of the taxpayer, because that possibility was not allowed under article 25 of the United Nations Model Convention, even if it was provided for in the commentary. While some Committee members supported keeping the sentence or redrafting it, others supported its deletion. In view of the position reflected in the United Nations Model Convention, it was ultimately agreed to delete it.

- **References to interest and penalties in the examples provided in paragraphs 156 and 164.** The member asked that the references to interest and penalties found in the examples of letters provided in paragraphs 156 and 164 be modified to avoid the suggestion that interest and penalties could be the subject of a mutual agreement under article 25 (1), as had been done in other examples of letters included in chapter 5. The secretariat agreed that a change similar to that made previously could be made to the example found in paragraph 156. It was agreed to make that change.
- **Indication, in paragraph 185, that the meaning of an undefined term agreed to pursuant to article 25 (3) would prevail over the domestic law meaning of that term.** The member asked for the deletion of that interpretation, found in paragraph 185, on the basis that it corresponded to a change made recently to article 3 (2) of the OECD Model Convention that had not been included in the United Nations Model. Following a discussion, it was agreed to redraft the last two sentences of the paragraph so as to indicate that a competent authority wishing to conclude such a mutual agreement should consider to what extent the agreed meaning could be applied if it differed from a domestic law meaning.

59. There were no other interventions on chapter 5 and the Chair concluded that the Committee had approved the chapter on the mutual agreement procedure, as contained in note E/C.18/2019/CRP.3, subject to the three drafting changes agreed to during the discussion, as noted above.

60. After a brief presentation of chapter 3 on domestic dispute resolution mechanisms, the Committee was invited to comment on the scope of the chapter. In response to a Committee member who asked why the Subcommittee had decided that chapter 3 and the handbook would not deal with disputes related to VAT, the secretariat explained that, as reflected in the chapter on the mutual agreement procedure, the focus of the handbook was on income taxes and the Subcommittee had not sought to substantively address VAT disputes.

61. Another Committee member added that, in his country, the same dispute resolution mechanisms applied to both VAT and income tax disputes, and it was suggested that this type of situation could be mentioned in the handbook. The secretariat observed that the Subcommittee had already agreed to recognize that possibility, as indicated in the first bullet point of paragraph 3 of the cover note.

62. In response to another question, Mr. Sasseville, of the secretariat, explained that section 3.3.3 on collection considerations did not deal with disputes related to collection, but with the issue of whether payment of disputed taxes was a condition for having recourse to a dispute resolution mechanism.

63. The Chair concluded the discussion by repeating the invitation, contained in paragraph 5 of the cover note, that Committee members and State observers wishing to send written comments on the preliminary draft of chapter 3 should do so by email to the secretariat before 31 May 2019.

H. Capacity-building

64. Mr. Tonino and other members of the Secretariat provided an update on the capacity-building activities carried out by the Department of Economic and Social

Affairs in the area of financing for sustainable development. It was noted that the Secretary-General, under his strategy for financing the 2030 Agenda, had pledged continued United Nations capacity-building support to developing countries to help them to foster domestic resource mobilization and address, in collaboration with other international organizations, challenges in international taxation that complicated their efforts.

65. It was mentioned that the Secretariat would continue to make available capacity development tools, training and technical assistance on tax treaties, transfer pricing and base erosion and profit shifting issues. A report was presented on the launch of online primers on double tax treaties and transfer pricing, both in English and in French, in which more than 600 participants from 38 countries had enrolled, as well as on progress made in further developing and disseminating capacity-building publications. Plans were outlined for country-level technical cooperation activities until the end of the year, including missions to the Plurinational State of Bolivia, Colombia, Indonesia, Mongolia and Paraguay.

66. In addition, the Secretariat reported on activities aimed at ensuring greater and mutually reinforcing synergies between capacity-building and tax policy work, including a successful pilot that involved combining a workshop and a meeting of the Subcommittee on Taxation of Extractive Industries in Da Nang in March 2019, as well as holding a planned workshop on the mutual agreement procedure in Vienna from 8 to 12 July 2019 back-to-back with a meeting of the Subcommittee on Dispute Avoidance and Resolution. It was noted that the updated version of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries would be used as reference work for an upcoming workshop on tax treaty negotiation organized jointly with OECD.

67. The Secretariat further mentioned endeavours to relate the technical work of the Committee to the broader policy concerns of the Economic and Social Council and others in supporting efforts at all levels to achieve sustainable development. It was noted that the special meeting of the Council on international cooperation in tax matters, which would immediately follow the nineteenth session of the Committee, would feature panel discussions on taxation and the digitalization of the economy, as well as on the role of taxation in promoting environmental protection and reducing inequality. Reference was also made to a workshop to be held in Nairobi from 10 to 13 June 2019, which would feature discussions of the interaction between fiscal policies and the Sustainable Development Goals.

68. Moreover, the Secretariat reported on initiatives aimed at expanding capacity-building activities to broader areas related to financing for sustainable development, including: an inter-divisional project aimed to strengthen the capacity of the least developed countries to develop evidence-based, coherent and well-financed strategies to implement the 2030 Agenda; and a project on subnational finance to support local governments in the application of comprehensive municipal asset management.

69. Members of the Committee and observers commended the capacity development work of the Department of Economic and Social Affairs, and several representatives of national tax authorities expressed interest in the online courses.

I. Environmental tax issues

70. The Coordinator of the Subcommittee on Environmental Taxation Issues, Natalia Aristizábal Mora, referenced the conference room paper on environmental tax issues (E/C.18/2019/CRP.4) and provided an overview of the proposed outline of a handbook on carbon taxation, revised to take into account the comments made during

the seventeenth session of the Committee. Ms. Aristizábal Mora highlighted the main innovations with respect to the previous outline.

71. Those innovations were: (a) the inclusion of a chapter containing a conceptual approach to carbon taxation (definitions of and motives for introducing a carbon tax), as well as economic theory elements; and (b) the inclusion of a chapter outlining the political framework for the introduction of carbon taxation. The second of those two chapters also gave guidance on how to overcome institutional barriers and promote better cooperation among different governmental entities responsible for introducing the tax, such as the Ministry of the Environment, the Ministry of Finance and the tax administration.

72. Ms. Aristizábal noted that the Subcommittee's work up to the eighteenth session had focused on two chapters, dealing respectively with the design and with the administration of carbon taxation, and that the Subcommittee had sought to approach the subjects in a practical and simple manner, with particular attention paid to the needs of government officials in developing countries.

73. Susanne Åkerfeldt, a member of the Subcommittee and Senior Adviser at the Ministry of Finance of Sweden, reported on the progress made in the two chapters. She highlighted that the handbook aimed at providing an overview of the different options available for implementing carbon taxation, but that each country would need to evaluate which option would be the best fit for its specific situation. She also noted that country examples would greatly add to the handbook and encouraged Committee members to liaise with the Subcommittee to provide their country experiences.

74. Ms. Åkerfeldt presented the content of the core chapter on carbon tax design (chapter 3 in the updated outline), which would cover both the fuel content approach and the direct emissions approach. She noted that the latter was a recent addition to the draft handbook and that the case of Chile would be presented to provide background to the Committee on that emissions approach.

75. Ms. Åkerfeldt noted that the draft also included guidance on how to identify who would pay the tax, and at which production or consumption stages it would be applied, which was a priority concern for many countries. Ms. Åkerfeldt then discussed the content of the chapter dealing with the administration of a carbon tax (chapter 4 in the updated outline), which provided guidance on how to use existing data and structures to implement the tax more efficiently.

76. Rodrigo Pizarro, a Professor at the University of Santiago, provided an overview of the country example of Chile, which would be included in the handbook. The example was particularly relevant as Chile had designed a carbon tax based on emissions and implemented it in the context of a broader fiscal reform. Mr. Pizarro reported that Chile had introduced three taxes on local and global contaminants, initially with a low rate, aimed at assessing the social cost of environmental damage and ensuring that the polluter would pay for it, as well as to provide incentives for industries to lower pollution. He highlighted the importance of creating a consistent monitoring framework, as well as the need to ensure clear communication channels between the different governmental entities responsible for implementing the tax.

77. Committee members supported the work conducted by the Subcommittee, including the country example approach (administrative aspects, impact on the economy and society, selection of tax rates), and encouraged the Subcommittee to continue to work along those lines and to focus on the practical implementation of such a tax.

78. The Subcommittee would continue to work in particular on the administrative issues, to be discussed at the nineteenth session of the Committee, as well as on issues

of the design of carbon taxation and on the conceptual approach to such taxation. The Subcommittee and its Coordinator were thanked for the work so far.

J. Tax consequences of the digitalized economy – issues of relevance for developing countries

79. The topic was introduced by the Co-Coordinator of the Subcommittee on Tax Challenges Related to the Digitalization of the Economy, Aart Roelofsen, who presented the paper on tax issues related to the digitization of the economy (E/C.18/2019/CRP.12), which was an outcome of the Subcommittee meeting held in Paris in January 2019, hosted by the Embassy of Nigeria, and of further drafting within a smaller group of Subcommittee members, the Co-Coordination and the secretariat.

80. Mr. Roelofsen put the work of the Subcommittee into context, recognizing the differences in approach to the issue of the taxation of the digitalized economy and in opinion on how to move forward. Some members were of the view that the Subcommittee should focus on proposing solutions, whereas other members recommended that they should first agree on the principles that would guide the work of the Subcommittee.

81. At the meeting in Paris, discussion had been facilitated by a paper prepared by the secretariat, which identified key issues and different tentative proposed solutions that were being debated in different forums. The discussion at the meeting had helped to clarify the different positions among members and a presentation by the secretariat of the Inclusive Framework on Base Erosion and Profit Shifting of OECD brought to the table an analysis of the different approaches being debated in the context of the Inclusive Framework.

82. Taking stock of the work on the Inclusive Framework and further reviewing the differing positions from members, in the paper, the Subcommittee identified the tax challenges of the digitalization of the economy as fundamentally relating to the inability of the jurisdiction (for current purposes referred to as the “source jurisdiction”), under the physical presence criteria of tax treaties, to tax the business profits of certain new business models that did not require a physical presence in the market to derive such profits.

83. To respond to those challenges, the Subcommittee proposed, in section II of the paper, a working approach agreed at its meeting in Paris and raised a series of questions for discussion by the Committee.

84. In essence, the working approach followed three basic principles:

- (a) Avoiding both double taxation and non-taxation;
- (b) Preferring taxation of income on a net basis where practicable;
- (c) Seeking simplicity and administrability.

85. Implementing those principles would involve the Subcommittee:

- (a) Adopting an approach independent of similar work being pursued in other forums, while giving due consideration to developments that would inform its work;
- (b) Providing guidance on:
 - (i) Tax treaty issues;
 - (ii) Domestic law issues;
 - (iii) VAT issues.

86. The rest of the paper addressed the key tax issues raised in relation to the digitalization of the economy, work on those issues in other forums and four questions that had arisen in the Subcommittee on which the Committee was asked to give guidance.

87. As a result of the discussions that followed, the Committee agreed that the way forward with respect to the tax consequences of the digitalized economy would be for the Subcommittee to draft a paper for presentation at the nineteenth session of the Committee:

(a) Including an explanation and evaluation of proposals internally developed or developed in other forums;

(i) Describing the advantages and disadvantages of the abovementioned proposals;

(ii) Giving special attention to:

a. The interests of developing countries;

b. Administrability, fairness and certainty;

(iii) Taking into account different economies and market forces;

(iv) Without losing sight of the principles agreed at the meeting of the Subcommittee held in January 2019, as indicated in paper E/C.18/2019/CRP.12;

(b) Considering, where relevant, expert commentaries on issues relating to the digitalized economy;

(c) Aiming at finalized proposals within the term of the current membership of the Committee.

88. The proposed chapters to be included in the paper were as follows:

1. Introduction, general background, reasons for the work and guiding principles;

2. Relevance and analysis (advantages and disadvantages) of work in other forums:

(a) Inclusive Framework on Base Erosion and Profit Shifting;

(b) International Monetary Fund;

(c) European Union;

(d) African Tax Administration Forum;

(e) Others;

3. Possible alternative or modified approaches for allocation of taxing rights and nexus rules, including withholding taxes;

4. Conclusions.

89. It was agreed that a member or a group of members could propose alternative approaches that were either the same as, or different from, those before the Inclusive Framework or other forums, including modified versions of the same approaches, which would be included in chapter 3 of the paper for discussion at the nineteenth session of the Committee, to be held in October 2019. It was agreed that while the focus at this stage would be on the “pillar one” issues, to use the terminology employed in the work on the Inclusive Framework, “pillar two” could be reverted to at a later stage. There were different views on whether the current mandate of the

Subcommittee extended to pillar two issues that did not need to be resolved at this stage.

90. The need to ensure the involvement of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing in issues relating to the digitalized economy going forward was noted by one member. There was some difference of opinion among Committee members as to whether likely deviation from current approaches affected that question. The matter could be resolved as the possible ways forward became clearer, but the presence of the Co-Coordinator and other members of that Subcommittee in the Subcommittee on Tax Challenges Related to the Digitalization of the Economy would help to ensure a coherent approach.

K. Taxation of development projects

91. In her opening remarks, the Coordinator of the Subcommittee on the Tax Treatment of Official Development Assistance (ODA) Projects, Marlene Parker, drew attention to the paper on work on the guidelines on the tax treatment of ODA projects (E/C.18/2019/CRP.6). She referred to the difficulties that tax exemptions for ODA created for developing countries. After summarizing the work that led to the setting-up, at the seventeenth session, of the Subcommittee on the Tax Treatment of ODA Projects, she reported on the first meeting of the Subcommittee, held in London from 10 to 12 March 2019. The meeting, which had been hosted by Her Majesty's Revenue and Customs of the United Kingdom, was attended by Committee members and representatives of the World Bank, OECD, IMF and the African Tax Administration Forum. It allowed the Subcommittee to discuss and substantially revise the draft guidelines on the tax treatment of ODA projects that had been prepared for the Committee in 2006.

92. The Committee was invited to discuss the revised draft guidelines, focusing on the introduction and the section that included the guidelines, but excluding the detailed explanations on the guidelines. Ms. Parker explained that the draft guidelines were based on the principle that there should be no special tax treatment for ODA except in very limited circumstances, such as when the taxing rules of a recipient country did not comply with certain generally agreed tax principles or in exceptional cases in which a review of the governance structure, tax system or tax administration of a country raised serious concerns about the payment of tax to that country. They also sought to ensure that when special tax treatment was granted, it was done in a clear, targeted and transparent manner.

93. Mr. Sasseville, of the secretariat, drew the attention of the Committee to the preliminary nature of the revised guidelines included in note E/C.18/2019/CRP.6 and outlined the next steps that would lead to the conclusion of the work of the Subcommittee in 2020.

94. During the subsequent discussion, one Committee member asked how the guidelines would address the situations of employees seconded to another country by a development agency. The secretariat explained that guideline 11 would apply if such employees were government employees and that guideline 12 would apply to other types of employees.

95. One Committee member from a developing country described the approval and monitoring process typically followed for development projects in his country. He noted that the project agreement signed by the donor agency and his country was only part of the process and that donors could object or even suspend a project at each subsequent step of its implementation. He added that requests for tax exemptions were often made by private companies when bidding for the implementation of the project.

96. In response to a question by a Committee member, the secretariat explained how projects carried out by international organizations were covered by the proposed guidelines. The secretariat indicated, however, that the guidelines were not intended to address the issue of tax-planning devices used to provide donor development finance, which was raised by a representative of civil society.

97. In response to the concerns expressed by a Committee member regarding the exception to the principle of not requesting tax exemptions in the particular cases in which there were serious concerns about the payment of tax to a recipient country, the Coordinator and the secretariat indicated that the exception had been the subject of much debate in the Subcommittee and agreed that further work was needed on the wording of the exception.

98. A representative from a regional tax administration forum expressed support for the overall approach taken by the Subcommittee. He suggested, however, redrafting guideline 13 so as to avoid using the 183-day period as a proxy for the concept of permanent establishment. He indicated that the forum would provide a draft of different wording for that purpose. The Coordinator welcomed that offer.

99. Referring to guideline 2, another member of the Committee asked for a more balanced approach that would avoid what appeared to be a commitment by developing countries.

100. The Coordinator concluded the discussion by indicating that the Subcommittee would continue its work in the light of the suggestions made and would prepare a revised version of the guidelines for discussion at the next meeting of the Committee.

L. Relationship of tax treaties with trade and investment treaties

101. Michael Lennard, the Secretary of the Committee, presented the secretariat paper on the interaction of tax, trade and investment agreements (E/C.18/2019/CRP.14), noting that the paper provided information for the Committee on some of the issues arising from the interaction of tax and certain bilateral, regional or multilateral trade or investment treaties.

102. Those issues included both general issues of overlap, such as tax measures that could prima facie breach the requirements of non-tax agreements, and some specific areas of overlap, including with respect to: definitions; “fair and equitable treatment” provisions; “full protection and security” clauses; arbitrary, discriminatory or unreasonable measures; “umbrella” clauses; and non-discrimination provisions. Several Committee members and observers welcomed the paper and recognized the importance of continuing to analyse those issues, in cooperation with relevant stakeholders.

103. The Committee endorsed the proposal for follow-up work at the secretariat level, which would comprise two streams: (a) preparation of a more detailed paper on the relevant issues and possible responses, including specific drafting options, by the twentieth session of the Committee; and (b) development of a guide on how to address claims under non-tax treaties against tax measures and pre-emptively deal with them, including through risk assessment, avoidance and mitigation. It was also agreed that both work streams would involve seeking input from a focus group on tax and non-tax agreements, composed of Committee members and other relevant experts, and working as much as possible with OECD, as well as with others with expertise in the issues, including the United Nations Conference on Trade and Development and possibly the United Nations Commission on International Trade Law and other stakeholders.

M. Other matters

104. The secretariat noted that, as indicated in the report on the seventeenth session of the Committee, the secretariat would work with José Troya on a note addressing aspects of the use of shell companies. It would also prepare short notes on issues relating to the application of the limited force of attraction rule and on the application of article 13 (5) of the United Nations Model Convention to partnerships.

105. During the session, Committee members and observers recognized with gratitude the important contribution of the Subcommittee meeting hosts, as well as the European Commission and the Government of India, which had contributed financially to supporting such meetings, especially through the participation of Subcommittee members from developing countries.

106. The Committee also stressed the importance of Committee guidance, such as models, manuals and handbooks, being published quickly in the official languages of the United Nations.

107. The secretariat noted, and the Committee endorsed, the following proposed dates for the forthcoming sessions of the Committee:

- Nineteenth session: Geneva, 15–18 October 2019
- Twentieth session: New York, 27–30 April 2020 (with the special meeting of the Economic and Social Council on international cooperation in tax matters to be held on 1 May)
- Twenty-first session: Geneva, 20–23 October 2020

Chapter IV

Matters calling for action by the Economic and Social Council

Draft decision recommended for adoption by the Council: Venue and dates of and provisional agenda for the nineteenth session of the Committee

108. The Committee of Experts on International Cooperation in Tax Matters recommends that the Economic and Social Council review and adopt the following draft decision:

Draft decision

Venue and dates of and provisional agenda for the nineteenth session of the Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council:

(a) Decides that the nineteenth session of the Committee of Experts on International Cooperation in Tax Matters will be held in Geneva from 15 to 18 October 2019;

(b) Approves the following provisional agenda for the nineteenth session of the Committee:

Provisional agenda

1. Opening of the session by the Co-Chairs.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
 - (a) Procedural issues for the Committee;
 - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries;
 - (c) Tax and the Sustainable Development Goals;
 - (d) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
 - (e) Update of the Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries;
 - (f) Dispute avoidance and resolution;
 - (g) Capacity-building;
 - (h) Environmental tax issues;
 - (i) Tax consequences of the digitalized economy – issues of relevance for developing countries;
 - (j) Tax treatment of official development assistance projects;
 - (k) Relationship of tax with trade and investment treaties;

- (l) Other matters for consideration.
 - 4. Provisional agenda for the twentieth session of the Committee.
 - 5. Adoption of the report of the Committee on its nineteenth session.
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