

# **Committee of Experts on International Cooperation in Tax Matters**

**Report on the tenth session  
(27-31 October 2014)**



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## Chapter I

### Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2014/220, the tenth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 27 to 31 October 2014.

2. The tenth session of the Committee was attended by 24 Committee members and 156 observers. The following Committee members attended the session (with the nominating country in parentheses, although the members serve in their personal capacity): Nasser Mohammed al-Khalifa (Qatar); Noor Azian Abdul Hamid (Malaysia); Mohammed Amine Baina (Morocco); Bernadette May Evelyn Butler (Bahamas); Andrew Dawson (United Kingdom of Great Britain and Northern Ireland); El Hadji Ibrahima Diop (Senegal); Johan Cornelius de la Rey (South Africa); Liselott Kana (Chile); Toshiyuki Kemmochi (Japan); Cezary Krysiak (Poland); Armando Lara Yaffar (Mexico); Wolfgang Lasars (Germany); Henry John Louie (United States of America); Enrico Martino (Italy); Eric Nii Yarboi Mensah (Ghana); Ignatius Kawaza Mvula (Zambia); Carmel Peters (New Zealand); Jorge Antonio Deher Rachid (Brazil); Pragma S. Saksena (India); Christoph Schelling (Switzerland); Stig Sollund (Norway); Xiaoyue Wang (China); Ingela Willfors (Sweden); and Ulvi Yusifov (Azerbaijan).

3. The session was attended by observers for: Argentina, Austria, Belgium, Czech Republic, Democratic Republic of the Congo, Egypt, France, Germany, Kuwait, Liechtenstein, Luxembourg, Mexico, Netherlands, Philippines, Poland, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Switzerland, Turkey and United Republic of Tanzania.

4. Observers from the following intergovernmental organizations, among others, were also present: European Commission; International Monetary Fund (IMF); Inter-American Center of Tax Administrations; International Tax Compact; Organization for Economic Cooperation and Development (OECD); and United Nations Conference on Trade and Development (UNCTAD).

5. The provisional agenda for the tenth session as considered by the Committee (E/C.18/2014/1) was as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
  - (a) Issues related to the updating of the United Nations Model Tax Convention:
    - (i) Article 4 (Resident): application of treaty rules to hybrid entities;
    - (ii) Article 5 (Permanent establishment):
      - a. The meaning of “connected projects”;
      - b. Physical presence issue;

- (iii) Article 8 (Shipping, inland waterways transport and air transport):
    - a. The meaning and coverage of the term “auxiliary activities”;
    - b. The application of the article to cruise shipping;
  - (iv) Article 9 (Associated enterprises): update of its commentary and transfer pricing issues;
  - (v) Base erosion and profit shifting;
  - (vi) Article 12 (Royalties): general consideration, including equipment-related issues;
  - (vii) Article 13 (Capital gains): the practical implications of paragraph 4;
  - (viii) Article 23 (Methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation;
  - (ix) Article 26 (Exchange of information);
  - (x) Taxation of services:
    - a. Taxation of services — general discussion;
    - b. Article on technical services;
    - c. Other issues;
  - (b) Other issues:
    - (i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
    - (ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
    - (iii) Taxation of the extractive industries;
    - (iv) Taxation of development projects;
    - (v) Capacity-building;
    - (vi) Cooperative compliance and corporate governance in tax matters;
    - (vii) International trade in goods — tax issues.
4. Dates and provisional agenda for the eleventh session of the Committee.
5. Adoption of the report of the Committee on its tenth session.

## Chapter II

### Organization of the session

#### Opening of the session and adoption of the agenda

6. The tenth session of the Committee was opened on 27 October 2014 by the Chair of the Committee, Armando Lara Yaffar. He then invited the Director of the Financing for Development Office of the Department of Economic and Social Affairs, Alexander Trepelkov, to speak on behalf of the Secretary-General of the United Nations.

7. Mr. Trepelkov welcomed the new Committee members, noted the Committee's achievements and expressed the hope that the Committee would be able to finalize the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries and the United Nations Practical Manual on Transfer Pricing for Developing Countries before the end of its current term. He informed the participants of the United Nations intergovernmental process and important developments related to the work and mandate of the Committee, including the transition from the Millennium Development Goals framework to a new post-2015 development agenda based on a new set of sustainable development goals, which would be adopted at a summit to be held in September 2015. Mr. Trepelkov emphasized that domestic resource mobilization, through effective tax systems and international tax cooperation, would continue to play a critical role in development-related discussions.

8. Mr. Trepelkov indicated that, pursuant to its resolution 68/279, the General Assembly would hold the third International Conference on Financing for Development in Addis Ababa from 13 to 16 July 2015, during which the financing framework for the post-2015 development agenda would be presented. As part of its preparatory process, in the area of tax, the Economic and Social Council would hold its annual special meeting on international cooperation in tax matters on 22 April 2015, with the participation of national tax authorities.

9. Mr. Trepelkov informed the participants that the finance ministers of the members of the Group of 20, in their recent Cairns communiqué, recognized the role of the United Nations in international tax matters and requested the United Nations to work with OECD, IMF and the World Bank Group to: (a) develop a new structured dialogue process for engaging with developing countries with a view to providing input to the Group of 20/OECD project on base erosion and profit shifting; (b) develop toolkits to assist developing economies with the implementation of the action items on base erosion and profit shifting; and (c) prepare a report on options for the efficient and effective use of tax incentives in low-income countries. Other aspects of the Secretariat's present and future workplans would be elaborated during the session.

10. The Chair reaffirmed the importance of updating the Model Convention and the Transfer Pricing Manual before the terms of the current members expired at the end of June 2017. He then recognized the valuable contribution of Tizhong Liao to the work of the Committee since its formation, most recently as First Vice-Chair of the Committee until his resignation. He requested Mr. Trepelkov to conduct an election for the vacant Bureau position. Henry John Louie was elected as First Vice-Chair, Mohammed Amine Baina, as Second Vice-Chair, Liselott Kana, as Third Vice-Chair,

Pragya Saksena, as Fourth Vice-Chair and Noor Azian Abdul Hamid, as Rapporteur for the session. All elections were held by acclamation.

11. Mr. Lara then put forward the provisional agenda as contained in document E/C.18/2014/1 to the Committee, and it was adopted, except that, in view of a full agenda, item 3 (b) (vi) on cooperative compliance and corporate governance in tax matters would not be considered at the tenth session.

12. The following summary reflects discussions on all agenda items, not necessarily in the order of discussions.

## Chapter III

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

#### A. Article 4 (Resident): application of treaty rules to hybrid entities

13. Pursuant to a request made at the ninth session, Mr. Louie reported on the application of tax treaties to payments through so-called “hybrid entities” (entities characterized differently by treaty partners as to their transparency or opacity for tax purposes).

14. Mr. Louie presented a paper (E/C.18/2014/CRP.14)<sup>1</sup> containing examples that illustrate tax treaty issues potentially arising in the context of payments made through hybrid entities, as well as proposed modifications to article 1 of the Model Convention and its commentary aimed at preventing unintended consequences of the application of tax treaties to such payments. Tax treaty issues that might arise include: (a) double taxation resulting from inappropriate *denial* of treaty benefits; (b) non-taxation resulting from unintended *granting* of treaty benefits, such as to residents of third countries; or (c) the granting of an inappropriate *level* of treaty benefits (for example, the granting of the lower withholding rate on dividends paid to companies when they were derived by an individual shareholder).

15. Mr. Louie noted that the proposed modifications to article 1 of the Model Convention and its commentary outlined in the paper were meant to reflect principles in the OECD report on partnerships and were not intended to restrict a State’s right to tax its own residents.

16. Several participants commented on the proposed modifications. Some expressed concerns about the application of the above-mentioned principles in cases involving third countries. Mr. Louie was thanked for his work and was asked to prepare an updated version of his paper to be discussed at the eleventh session of the Committee, in 2015, taking into account the feedback and comments received.

17. In future, reference will be made in the agenda to article 1, which is more accurate than the reference to article 4.

#### B. Article 5 (Permanent establishment)

##### 1. The meaning of “connected projects”

##### 2. Physical presence issue

18. Andrew Dawson presented a paper (E/C.18/2014/CRP.11) on: (a) the meaning of the term “the same or a connected project” in article 5 (3) (b) of the Model Convention; and (b) the requirement of physical presence for a permanent establishment to exist. The paper contained a proposal to include additional paragraphs in the commentary aimed at clarifying those issues. The paper was prepared by Claudine Devillet, who was unable to participate. The Committee thanked Mr. Dawson for presenting the paper, as well as another paper prepared by

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<sup>1</sup> Documentation for the tenth session is available from [www.un.org/esa/ffd/events/tenth-session-tax.html](http://www.un.org/esa/ffd/events/tenth-session-tax.html).

Ms. Devillet (E/C.18/2014/CRP.10), and her contribution to the work of the Committee over many years was noted with appreciation. The two aspects of the paper were considered together.

19. The Committee discussed the proposals contained in the paper and, after making further changes to it, agreed to include in the commentary on article 5 (3) a new paragraph (paragraph 12.1) providing that the traditional interpretation of subparagraph (b) would require the physical presence in the source State of individuals, being an employee or personnel of the enterprise furnishing services, in order for a permanent establishment to exist in that State, while recognizing that some Committee members disagreed. In addition, the Committee decided to include a new paragraph 12.2 clarifying that only the profits attributable to the services performed within the source State could be taxable in that State.

20. The Committee asked Mr. Dawson to redraft and simplify some other paragraphs proposed to be added to the commentary on article 5 (3), including some examples, with a view to clarifying that reference should be made to the perspective of both the service provider and the customer in determining what constitutes “the same or a connected project”.

21. The Committee agreed that some of the source State concerns arising from the digital economy and changes in company practices might be addressed by adopting the forthcoming article on fees for technical services and that the relationship between the provisions of article 5 dealing with services and those of the article on fees for technical services should be clarified in the commentary to the latter.

## **C. Article 8 (Shipping, inland waterways transport and air transport)**

### **1. The meaning and coverage of the term “auxiliary activities”**

22. The Secretary of the Committee, Michael Lennard, presented a paper prepared and updated by the Secretariat on the term “auxiliary activities” (E/C.18/2014/CRP.1). Mr. Lennard noted that in the OECD commentary the terminology was changed from “auxiliary activities” to “ancillary activities” in 2005 in order to prevent potential confusion with the term “preparatory and auxiliary activities” used in other parts of the OECD Model Tax Convention on Income and on Capital. Mr. Lennard proposed considering whether the United Nations commentary should adopt the same terminology on this point.

23. Mr. Lennard also noted that the current United Nations commentary was out of date in other respects, including: not addressing significant changes in the operation of the airline and shipping industries, such as code-sharing of flights; use of the outmoded term “propaganda”; examples of “auxiliary activities” that have limited relevance in practice; and a lack of more relevant examples, such as coverage of investment income now included in the OECD commentary. In response to a letter from the International Air Transport Association, Mr. Lennard explained that the term “additional profit earning items” was used in the paper solely to avoid a possible implication that would arise if the industry term “ancillary items” were used instead; this did not preclude whether they were covered by article 8.

24. Mr. Lennard suggested that the Committee consider creating a subcommittee to update the commentary on article 8. He also emphasized the importance of inputs

from relevant industries to update the examples given in the commentary and to make it more meaningful and relevant in practice.

## **2. The application of the article to cruise shipping**

25. Enrico Martino presented a paper prepared by the Secretariat with his input on the application of article 8 to cruise shipping (E/C.18/2014/CRP.2, attachment A and appendix to attachment A). The issues were twofold: (a) whether cruise shipping could in general be covered by article 8 as “international traffic”; and (b) if the answer to the first issue was in the affirmative, to what extent particular income from cruise shipping might fall within the coverage of article 8 as income from either directly connected or auxiliary/ancillary activities. Mr. Martino added that Italy, for example, considered cruise shipping covered in general by article 8 as “international traffic” and that a different approach would create problems, since it was difficult to quantify the profits from cruise shipping.

26. The International Chamber of Shipping and the Cruise Lines International Association noted that the primary revenue of source States from passenger transport came from port-user fees (generally imposed on a per passenger basis); inability to divide the income from international transportation between jurisdictions was unchanged; and clarification in this area was very important in practice.

27. The Committee decided to create a new Subcommittee on Article 8: International Transportation Issues, and appointed Cezary Krysiak Coordinator. Other members of the Subcommittee are Mr. Martino, Mr. Dawson, Stig Sollund and Ulvi Yusifov, as well as representatives of the two aforementioned organizations. The Subcommittee is mandated to report to the Committee, beginning at the eleventh session, in 2015, on possible updates to the commentary on article 8 of the Model Convention, in particular the coverage of the concept of “auxiliary activities” and the issue of the application of article 8 to cruise shipping.

## **D. Article 9 (Associated enterprises): update of its commentary and transfer pricing issues**

28. The Committee discussed the revision of the commentary on article 9 (Associated enterprises) of the Model Convention and ongoing work on the next update of the Transfer Pricing Manual. The Coordinator of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, Mr. Sollund, introduced the issues and presented a note on the update of the commentary on article 9 of the Model Convention (E/C.18/2014/4) and a report on the work of the Subcommittee (E/C.18/2014/CRP.15).

29. With regard to the revision of the commentary, Mr. Sollund explained that in 2011, during the final discussion on the update of the Model Convention at the Committee’s seventh session, despite a general acknowledgement of the importance of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, some members were not comfortable with a statement that might be read as saying that a document issued by an organization of which their country was not a member ought to be followed by everyone. They also considered it necessary to remember that the document represented guidelines only. It was agreed that this part of the commentary would be revised.

30. The Coordinator reminded Committee members of the Subcommittee's mandate and outlined the process followed. The Committee members on the Subcommittee met in April 2014 and arrived by consensus at a proposal regarding changes to the commentary on article 9 of the Model Convention. General considerations regarding the proposed new commentary on article 9 included: (a) recognizing the arm's length principle as found in the United Nations and OECD Model Conventions; (b) continuing to remind countries that the application of the arm's length principle presupposed transfer pricing rules in domestic legislation; (c) replacing the statement by the former Group of Experts, the predecessor of the Committee, with quotation from the OECD commentary on article 9; (d) quoting OECD language on how that organization categorized the international significance of the OECD Guidelines; and (e) reflecting a view agreed by Committee members on the relevance of the OECD Guidelines and the Transfer Pricing Manual in helping to implement the arm's length principle.

31. Mr. Sollund noted the importance of referring to the Transfer Pricing Manual in the commentary, although on reflection he considered it best to replace the words "seeks broad consistency" in the last sentence of proposed paragraph 4 of the commentary with "seeks consistency" to be consistent with the formulation in the foreword to the Manual. He then invited the Committee to approve the proposal of the Subcommittee with that amendment.

32. The Committee accepted the changes to the commentary as presented by Mr. Sollund. It was agreed that the proposal of one member to add a sentence to the commentary on article 9 (2) on alternative methods and another proposal to provide alternative wording in the commentary on article 9 (3), for countries in which gross negligence and wilful default were not liable to penalty, would be added to the catalogue of issues for future updates.

33. Mr. Sollund then recalled the mandate given to the Subcommittee to update and add new chapters to the Transfer Pricing Manual and turned to that mandate. He noted that the Subcommittee would consider comments and proposals for amendments to the Manual and draft an additional chapter on the treatment of transactions relating to intangibles, an additional chapter on intra-group services and management charges, additional text or a chapter on business restructuring and an annex on available technical assistance and capacity-building resources. Mr. Sollund reminded the Committee that, in drafting the additional chapters and materials, the Subcommittee was to give due consideration to the outcome of the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting, which meant, for example, awaiting some of the OECD work on intangibles before beginning such work in earnest.

34. Mr. Sollund noted that Michael Kobetsky was team leader for the work on intra-group services and management charges and Giammarco Cottani was leading the work on business restructuring and intangibles. Mr. Sollund thanked the Government of Italy for hosting one of the Subcommittee meetings and encouraged other Governments to do the same.

35. Mr. Kobetsky outlined the scope of work being done on the new services chapter and raised some policy issues under consideration. He indicated that the interests of tax authorities and multinational enterprises were, in a sense, competing. Tax authorities of countries of service recipients wanted to ensure that only genuine service charges were allocated to service recipients, while the authorities of

countries of service providers were concerned with service charges being allocated to group members with an appropriate mark up. Multinational enterprises, for their part, wanted to ensure that service costs were allocated to group members and had appropriate profit margins. Developing countries were concerned about base erosion through service charges, such as claiming that such high-margin services as strategic management and research and development had been rendered, when it was hard to identify benefits.

36. Mr. Kobetsky then explained some policy principles on how a tax authority could determine whether a deduction should be granted. The traditional approach was that two tests had to be satisfied: first, that the recipient received an economic benefit from the service provided, and second, that the multinational enterprise would otherwise pay an independent party to provide the service or perform the service internally. The application of those principles could be challenging in practice, as auditors had limited knowledge of the companies that they audited. Different methods could be used when pricing services for transfer pricing purposes, and the Transfer Pricing Manual would seek to provide examples for different types of services.

37. According to Mr. Kobetsky, there was a need to distinguish between high-margin and low-margin services, which arose as tax authorities might then be in a position to make use of simplification measures with regard to low-margin services. Developing definitions to help make such distinctions would be an important aspect of the chapter. "Safe harbours" for non-essential services and a *de minimis* rule with a view to simplicity and resource savings were under discussion. Cost contribution arrangements were also being looked at. In closing, Mr. Sollund stated that the intention of the Subcommittee was to publish drafts for comments on the website of the Committee following the next meeting of the Subcommittee, in April 2015.

## **E. Base erosion and profit shifting (various articles)**

38. Marlies de Ruiter of OECD gave a presentation on progress with regard to the OECD/Group of 20 Action Plan on Base Erosion and Profit Shifting, including the next steps.

39. Introducing the paper containing a summary of responses to a questionnaire for developing countries on base erosion and profit shifting (E/C.18/2014/CRP.12), the Coordinator of the Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries, Carmel Peters, first put the work of the Subcommittee in context. In June 2013, the OECD/Group of 20 Action Plan on Base Erosion and Profit Shifting, which recognized a role for the United Nations in putting forward developing countries' perspectives on base erosion and profit shifting, was released. During its ninth session, in October 2013, the Committee formed the Subcommittee, a key part of whose mandate was to follow up on discussions within OECD and liaise with developing country officials to raise awareness of matters being discussed and seek their views for integration into OECD work.

40. Ms. Peters then talked about the 15 actions of the OECD/Group of 20 Action Plan and their relevance to the work of the Committee. She indicated that, though important, the Action Plan did not cover all relevant issues related to base erosion and profit shifting in developing countries. The Subcommittee commenced its work by issuing an information document on base erosion and profit shifting and the

Action Plan, describing the background and some policy implications for developing countries. The document was released along with a questionnaire with 10 questions that sought the feedback of developing countries on some of the important issues with regard to the Action Plan as determined by the Subcommittee. The last question was open-ended to capture any other issues about base erosion and profit shifting that countries wished to note.

41. In compiling the responses received, the Subcommittee sought to identify the issues most cited by countries. On the question related to common practices or structures leading to base erosion and profit shifting, respondents most frequently indicated intra-group payments and debts, transfer pricing and profit shifting to low-or no-taxation jurisdictions, treaty abuse, interest payments and royalties. As for other concerns, respondents often mentioned the digital economy, sales of goods and services over the Internet, offshore sales of tourism packages and abuse of tax incentives.

42. To address such issues, respondents indicated that they were looking into transfer pricing and value added tax (VAT) legislation, withholding taxes, renegotiating some treaties or reconsidering some provisions in those treaties, and adopting anti-abuse legislation.

43. Responding to the question on the main obstacles that developing countries faced in eliminating or mitigating base erosion and profit shifting, countries pointed to exchange of information and the lack of information on relevant taxpayers, comparability of data, and capacity and human resources. The legal structure was also mentioned as a potential obstacle.

44. Among the issues addressed in the Action Plan, the four which were identified as being of greatest concern by order of importance were: transfer pricing and intangibles (action 8), transfer pricing and other high-risk transactions (action 10), aggressive tax planning disclosure (action 12) and transfer pricing documentation (action 13). Transfer pricing risks and capital (action 9) and interest deductions (action 4) were cited as well. A significant but lesser number cited data analysis (action 11) and treaty abuse (action 6).

45. Identifying Action Plan-related issues important to developing countries but not identified as likely to be key ones in the questionnaire, respondents often cited avoidance of permanent establishment status (action 7) and the digital economy (action 1). Harmful tax practices (action 5) and controlled foreign corporation rules (action 3) were also cited.

46. Other overall issues, outside legislation reform, considered important by the respondents were capacity-building, risk analysis and transfer pricing databases. Countries that responded were also asked about issues outside the Action Plan that warranted focus; the top four identified were allocation of taxing rights between States of source and residence, taxation of capital gains, automatic exchange of information and loss of revenue due to tax incentives.

47. Ms. Peters signalled that, going forward, the Subcommittee proposed looking to what needed to be done in the context of the Model Convention once the Action Plan was completed and some changes were brought about in the OECD Model. She requested a mandate to make recommendations for possible updates to the Model related to ongoing work on base erosion and profit shifting. The Subcommittee

would focus on needed actions or work not currently covered by existing Subcommittees.

48. The mandate of the Subcommittee was revised as follows (the new part of the mandate in bold):

“The Subcommittee is mandated to draw upon its own experience and engage with other relevant bodies, particularly the OECD, with a view to monitoring developments on base erosion and profit shifting issues and communicating on such issues with officials in developing countries (especially the less developed) directly and through regional and interregional organizations. This communication will be done with a view to:

- Helping to inform developing countries on such issues;
- Helping to facilitate the input of developing country experiences and views into the ongoing United Nations work, as appropriate; and
- Helping to facilitate the input of developing country experiences and views into the OECD/Group of 20 Action Plan on Base Erosion and Profit Shifting.

**The Subcommittee is further mandated to report to the Committee, beginning at the eleventh annual session of the Committee, in 2015, on:**

- **Proposed updates to the United Nations Model Convention relating to matters addressed as part of the Action Plan on Base Erosion and Profit Shifting, with a particular emphasis on the next such update; and**
- **Other possible work relating to base erosion and profit shifting issues that the Committee may wish to undertake or request the Secretariat to undertake.**

The Subcommittee will report on its activities at each annual session.”

49. Ingela Willfors volunteered to join the Subcommittee and was welcomed.

## **F. Article 12 (Royalties): general consideration, including equipment-related issues**

50. The Secretariat introduced the agenda item by presenting a note on the differences between article 12 of the United Nations Model Convention and the corresponding article of the OECD Model, with a focus on technical issues regarding the definition of royalties. It was recalled that when the former was updated in 2011, the different views of some members as to the treatment of some software-related payments were noted in the new commentary but the issues were not articulated in detail. The lack of a detailed discussion of the term “industrial, commercial or scientific equipment” was also noted during the course of preparing the 2011 update of the United Nations Model Convention.

51. After a brief discussion, the Committee asked the Secretariat to prepare a note with proposed text aimed at clarifying the meaning of the term “industrial, commercial or scientific equipment” in the commentary on article 12, as well as dealing with the issue of coverage or otherwise of software-related payments under the article.

## **G. Article 13 (Capital gains): the practical implications of paragraph 4**

52. Ms. Saksena presented a paper on the practical implications of article 13 (4) (E/C.18/2014/CRP.13), based on 14 responses to a questionnaire on country practices regarding article 13 (4) of the Model Convention. Ms. Saksena explained a number of practical issues that developing countries in particular were facing, such as the lack of information and capacity necessary to handle the matter. She indicated that some of the specific issues raised by the provision, even if a relevant transaction could be identified, were:

- The alienator's possible lack of information as to how the value of an interest is comprised, especially indirectly.
- Ascertaining the value of immovable property on the date of alienation, which may fall between two balance sheet dates.
- Definitional issues as to what constitutes "immovable property".
- Whether the book value or the fair market value should be used.
- Whether only assets appearing in the balance sheet are to be taken into account, to the exclusion of, for example, goodwill.
- How to ensure payment of taxes when the transaction is between two non-residents.

53. Ms. Saksena noted that some possible ways of dealing with the issues included:

- Regulatory frameworks for comprehensive financial reporting of immovable property owned.
- Greater transparency in valuation principles, in segment accounting reports and in identifying the location of immovable properties.
- Legislation clarifying issues as to the date and the method of valuation.
- Domestic tax law definitions of "immovable property".
- Clear rules on the valuation of intangible assets.
- Effective exchange of information.

54. The Committee thanked Ms. Saksena for her work in this matter.

## **H. Article 23 (Methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation**

55. Mr. Dawson presented a paper on articles 23 A and 23 B of the Model Convention and conflicts of qualification and interpretation (E/C.18/2014/CRP.10), which was prepared by Ms. Devillet pursuant to a request made at the ninth session of the Committee.

56. Mr. Dawson recalled that in case of divergences of qualification under the domestic laws of the contracting States or differences of interpretation of the treaty provisions between them, the tax treaty could fail to eliminate double taxation or might create non-taxation. He noted that, in the paper, it was proposed that

paragraphs 32.1 to 32.7 of the commentary on articles 23 A and 23 B of the OECD Model Convention be incorporated into the commentary on article 23 of the United Nations Model Convention, with a view to clarifying the interpretation of the relevant provisions and providing solutions to conflicts of qualification by giving precedence to the qualification under the domestic law of the source State.

57. Moreover, he noted that, in the paper, the inclusion in article 23 A of the United Nations Model Convention of an additional paragraph 4 — already provided as an alternative provision under paragraph 19 of the commentary on article 23 of the Model Convention — was also proposed, which would give the State of residence the right not to exempt an item of income or of capital where a divergence of interpretation of the treaty between the contracting States could lead to double non-taxation or to the imposition of low taxes on dividends, interest and royalties because of paragraph 2 of articles 10, 11 or 12. Ms. Saksena then introduced a paper containing comments made against the proposed inclusion of the aforementioned additional paragraph 4 in article 23 A of the Model Convention (E/C.18/2014/CRP.1) for the reasons noted in that paper.

58. After a discussion of the issues, the Committee agreed to incorporate into the commentary on article 23 of the United Nations Model Convention the above-mentioned paragraphs of the commentary on articles 23 A and 23 B of the OECD Model and proposed additional comments to reflect the differences between the provisions of the two Model Conventions. Moreover, the Committee agreed to include the proposed new paragraph 4 in article 23 A of the United Nations Model Convention but to reflect in the commentary thereto that some Committee members did not agree with such inclusion. The wording designed to reflect those views could be settled by written procedure in the course of the following year. Otherwise, it could be considered by the Committee at its eleventh session.

## **I. Article 26 (Exchange of information)**

59. The discussions on exchange of information were introduced by Mr. Lara, with Mr. Louie presiding as Chair. Mr. Lara referred to a paper on the subject (E/C.18/2014/CRP.4). Regarding the proposed changes to the commentary on article 26 of the Model Convention, Mr. Lara remarked that such changes would follow similar changes introduced in the OECD Model. He indicated that the Subcommittee on Exchange of Information took stock of the work already done by OECD and considered it useful for developing countries in many aspects. Mr. Lara indicated that the changes proposed mainly comprised:

- Amendment of the text of article 26 (2) to expressly provide for the possibility of information sharing by tax authorities with other law enforcement agencies and judicial authorities under certain conditions.
- Expansion of the commentary to clarify the interpretation of the standard of “foreseeable relevance” and to explicitly refer to the term “fishing expeditions” as an element within the determination of foreseeable relevance.
- Clarifications in the commentary relating to the identification of the person believed to be in possession of requested information.

- Inclusion of optional language in the commentary for contracting States wishing to improve the speed and timeliness of exchange of information under article 26.

60. The proposed changes to the article and its commentary were agreed by the Committee.

61. Mr. Lara then gave a presentation on the past, present and future of automatic exchange of information, summarizing the main challenges encountered, including the need to address the capacity issues of developing countries.

62. The Coordinator then introduced a paper on a proposed revised United Nations Code of Conduct on Cooperation in Combating International Tax Evasion (E/C.18/2014/CRP.5). He explained that at its fifth session the Committee adopted such a Code for consideration by the Economic and Social Council. At the time, the Council acknowledged the Code but did not take further action. Given recent developments, the Subcommittee on Exchange of Information considered it a good opportunity to update the Code in order to take on board those developments and to make a statement in support of automatic exchange of information.

63. Regarding the process, Mr. Lara proposed that initial agreement be sought concerning the principles contained in the document. After discussions at the tenth session, an amended version could be discussed at the eleventh session. Meanwhile, the Secretariat would be tasked with considering and reporting back in the first quarter of 2015 on the appropriate form of the document, one that could easily be adhered to by a State and was best adapted to any relevant Council and wider United Nations procedures and modalities.

64. In the discussion on the title and the preamble of the proposed Code, there was agreement that the word “we” would have to be replaced by the words “Committee of Experts on International Cooperation in Tax Matters”. The Committee also agreed to specify the exact number of countries committed to early adoption of the new global standard in automatic exchange of information shortly before the adoption of the document. The words “and abusive tax evasion” would be added to the title in square brackets, since further thought and discussions were needed to make a final decision on the matter, which would then be applied throughout the Code.

65. Moreover, the title would be modified to take into account the fact that the Code itself referred mainly to the automatic exchange of information. There was also consensus that the word “different” would be deleted when referring to challenges experienced by developed and developing countries, as other paragraphs aptly set out the specific concerns of developing countries. The Subcommittee committed to further specifying the kinds of challenges that developing and developed countries faced before the next session.

66. Regarding the parts of the Code entitled “Scope” and “Goals”, it was agreed that the wording “The Committee of Experts hereby adopts” would be revisited, depending on the process used to make the Code part of the agenda of the Economic and Social Council. It was also agreed that references to “tax evasion” or “[abusive] tax avoidance” would be consistent throughout the document and with other work done by the Committee and in other forums.

67. With regard to the part of the Code entitled “Commitments”, the words “both criminal and civil” in subparagraph (a) were removed to avoid confusion. Regarding

subparagraph (f), the term “recent developments” and what it was referring to would be specified by the Subcommittee. In subparagraph (h), the United Nations should be mentioned among the organizations that helped developing countries to identify their needs for capacity-building. Subparagraph (i) would be revised to ensure that commitments were distributed fairly between developed and developing countries, and additional information on the type of commitment would be added. Furthermore, agreement was reached that a reference to the need for appropriate safeguards and confidentiality rules would be added. References to “countries with economies in transition” would be deleted.

68. A statement on exchange of information on the proposed Code was read out on behalf of Bernadette Butler (who was unable to attend the discussion). In that statement, it was, in essence, noted that:

- The Global Forum on Transparency and Exchange of Information for Tax Purposes was the appropriate forum in which to promote and foster effective automatic exchange of information through political commitments.
- The Committee should provide support to developing countries as they navigated their way through effective exchange of information upon request and the new standard of automatic exchange of information.
- The Committee should not, however, place additional political obligations on developing country Member States in relation to exchange of information for tax purposes through the proposed Code.
- The work of the Committee should not simply be a duplication of effort on matters that were adequately covered by other organizations.

69. The Subcommittee was thanked for its work.

## **J. Taxation of services (various articles)**

### **1. General discussion**

70. Pursuant to a request from the Committee to Mr. Liao at its ninth session, Yansheng Zhu presented a paper on cyber-based services and the challenges that they presented for taxation due to rules that were generally drawn up with “brick and mortar” businesses in mind (E/C.18/2014/CRP.9). Mr. Zhu addressed the difficulties encountered in trying to define “services” and noted that neither of the Model Conventions provided a definition. He noted various classifications of services that were outlined in his paper as potentially relevant, including the four modes of supply under the General Agreement on Trade in Services of the World Trade Organization and the attempts of the System of National Accounts 2008 to categorize services as “change-effecting services” or “margin services”.

71. Mr. Zhu considered that the rules upon which the taxation of cross-border trade was based had been designed before the 1990s and had become somehow irrelevant in the face of an increasingly digitized economy. He presented two categories of services based on the supply mode: (a) services combined with physical objects; and (b) services combined with information or knowledge. He explained that services could be provided with transfer of ownership of inventory (goods or information) or supplied independently of the use of capital assets (tangible assets or information).

72. Mr. Zhu pointed out the growing importance of cyber-based services, which he defined as all types of services produced, delivered and consumed in the computer network through computer software. He suggested modifying the Model Convention to address such services through such options as:

- Adding a separate provision dealing with *all* types of cyber-based services.
- A new provision dealing with fees for cyber-based *technical* services.
- Expanding article 12 of the Model Convention to cover consideration for the use of or the right to use *industrial, commercial or scientific online databases*.
- Treating the website through which an enterprise carries on its business as a *virtual permanent establishment*.

73. The Committee thanked Mr. Zhu and invited him to participate in the work of the Subcommittee on Services.

## 2. Article on technical services

74. During the ninth session, in 2013, the Committee confirmed its decision to introduce a new article that deals with taxation of technical services. The drafting of the article and its commentary was part of the broader mandate of the Subcommittee on Tax Treatment of Services.

75. Presenting his paper on a proposed new article and its commentary (E/C.18/2014/CRP.8), prepared in his capacity as a consultant, Brian Arnold said that he tried to conform to the existing wording of the Model Convention and followed the provisions already found in articles 11 and 12, with some adjustments where necessary. Overall, the new article follows the principle that the country from which payments are made will be entitled to tax such payments on a gross basis without any threshold as to the presence in the country, irrespective of whether services are rendered within or outside the country.

76. As for the provisions of the new article, the first paragraph establishes its scope: payment for technical services arising in a contracting State and paid to the resident of the other contracting State who furnishes those services may be taxed in that other State. The second paragraph seeks to clarify how payment for technical services may be taxed in the source country. The country in which payments arise may also tax them on a gross basis at a rate to be agreed on by the two treaty partners (which could vary between different types of technical services).

77. Paragraph 3 attempts to provide a definition for payments for “technical services”, which he recognized would need to be elaborated more with some examples to be included in the commentary. Payments for technical services are currently defined as payments made for managerial, technical and consultancy services, which is the same language already used in many treaties that have a provision for payment for technical services. Mr. Arnold suggested using the same general and undefined terms as those provisions (which the proposed article was in essence intended to replicate) and providing more guidance in the commentary with detailed examples.

78. Mr. Arnold also indicated that the definition was exclusive, as it did not provide any recourse to domestic law for further elaborations or additions. The definition did not include reimbursement of expenses or payments by the employer

to employees. Payments to employees were dealt with in other articles of the Model Convention, namely articles 15, 16, 18 and 19. The inclusion or exclusion of reimbursements was quite debatable, according to Mr. Arnold. He indicated that, in the case of exclusion, taxpayers might be tempted to have a clause in their contract that all expenses would be reimbursed and that, therefore, the taxation of payments which was supposed to be on a gross basis with a reduced rate would become taxed on a net basis with the same reduced rate. Thus, there was a risk of potential abuse with such exclusion.

79. Paragraph 4 is worded similarly to the provisions of articles 10, 11 and 12. If the non-resident service provider has a permanent establishment or a fixed base in the other country and services are effectively connected with that permanent establishment or fixed base, then articles 7 or 14 will apply, instead of the article on fees for technical services, and taxation will be on a net basis.

80. Paragraphs 5 and 6 provide the deeming rules with regard to instances where payments for technical services arise. Paragraph 5 is similar to the provisions of articles 11 and 12. Its deeming rule recognizes payments for technical services arising in the country where the payer is a resident or where the payer has a permanent establishment or fixed base, if payments are borne by that permanent establishment or fixed base. Paragraph 6 provides for an exception to this rule. Payments for technical services are deemed not to arise in the State if a payer is a resident of that State but has a permanent establishment or fixed base in the other State or a third State and the payments are borne by that permanent establishment or fixed base.

81. Mr. Arnold indicated that in the new article there was no provision dealing with excessive payments; neither was there any counterpart to article 11 (6) or article 12 (6).

82. During the discussions, some Committee members and observers asked questions and clarification on such matters as “beneficial ownership”, a notion not addressed in the text, or the reasons for not having an “excessive payments” clause. Opinions varied as to whether such provisions were appropriate in relation to payments for services, even if relevant in other contexts. There was also some discussion as to whether issues concerning length of stay in proposed paragraph 4 should be more specifically addressed in the article itself.

83. While many members welcomed the new article because they saw it as assisting developing countries in dealing with the difficult issue of taxation of technical services and responding to a need reflected in State practice, other members expressed concerns about several aspects of Mr. Arnold’s draft, in particular the scope of what would be considered technical services. Concerns over the breadth and lack of clarity of the scope of the provision were also expressed by a number of observers, including observer countries such as the Czech Republic. Mr. Louie and Mr. Dawson invited a discussion of the policy objectives of such a treaty provision in order to determine the appropriate scope. Some Committee members suggested that fees for technical services could be taxed in the intended manner by expanding the definition of the term “royalty” and pointed out that such an approach would obviate the need for a new article.

84. The Committee had a lengthy discussion over the appropriateness of adopting a treaty rule that would grant taxing rights on the basis of the residence of the payer

of the service. The Committee considered a paradigmatic example an individual who was a resident of the United Kingdom but was present in another country and paid for a service. The new article as drafted by Mr. Arnold would give the United Kingdom a right to tax the fee, even if no deduction was taken for the fee by the individual when computing his United Kingdom tax liability (see para. 91 below). That result did not seem appropriate as a policy matter to some Committee members. Other members considered, however, that the broad terms already in use in State practice supported appropriate rather than excessive source State taxation and helped to preserve tax bases that were challenged by the nature of the services economy.

85. On the issue of beneficial ownership, Mr. Arnold provided his reasons for not thinking that it was warranted. In other provisions of the Model Convention dealing with the taxation of services, there was no mention of beneficial ownership. In his view, that would have created some confusion. He also indicated that, in paragraph 1 of the new article, he included the words “who furnishes those services” in the phrase “payments for technical services ... to a resident of the other contracting State who furnishes those services” so as to link the payment to the taxpayer, which was essentially the equivalent of “beneficial owner” tests present in articles 11 and 12.

86. One member pointed out that the issue of beneficial ownership was present in articles dealing with gross base taxation or passive income, as was the case in the proposed article, and therefore the concept should have a place there. Furthermore, the phrase “furnishing of services” might lead to controversies such as those concerning article 5 (3) (b), since such a phrase implied for most Committee members that there had to be physical presence. The member also indicated that the benefit should go to the economic owner and not the legal owner, as a third party not part of the treaty relationship should not take advantage of the provision.

87. In response to the discussion of the concept of “beneficial owner”, a redrafted provision incorporating such a concept was presented by Mr. Arnold. Concerning the exclusion of paragraph 6 of articles 11 and 12 dealing with excessive payments, Mr. Arnold drew the attention of the participants to the fact that those provisions applied only to the interest rate and the royalty rate and that there was no counterpart to it in technical services or in the new article. An excessive payment with regard to the services was dealt with under article 9, which should be sufficient, according to Mr. Arnold. In view of the support shown for such a provision, however, Mr. Arnold’s represented draft text included a new paragraph 7 on excessive fees.

88. The redraft of the article, in response to discussions, included removing the reference to the article as being subject to articles 17 and 20 (to be dealt with in the commentary), but the question of whether article 8 should be referred to in the article itself or only in the commentary was left for decision at a later date.

89. On the issue that arose of drafting two alternative options for the article in the text of the article itself, as in articles 8, 18, 23 and 25, the Coordinator of the Subcommittee on Services, Ms. Kana, indicated that no alternative draft had been received. She suggested that members who might be willing to draft an alternative could do so and the Subcommittee would try to include it as an option in the commentary. She reminded members that the idea of putting the new provision within another article (such as art. 12) was discussed and discarded during the ninth session of the Committee.

90. After some discussion, it was agreed that there should only be one article in the Model Convention; however, a new alternative version of the text of the article would be drafted with a view to its inclusion in the commentary. Those Subcommittee members who preferred an alternative option with less broadly expressed coverage were accordingly asked to put forward such text. It was agreed that the commentary should address the pros and cons of both the new article and the alternative options fairly, and in particular those that felt that the cons were not well explained were invited to put forward draft text that could be inserted in the draft commentary. To adequately reflect country practices in this area, it should be recognized that some countries might not wish to include the new article in their treaties in any form, for such reasons as those noted above.

91. Another issue raised concerned the deductibility of fees for technical services by the receiver of the services when computing income for tax purposes. In this respect, the comment was made that private consumers should be specifically excluded from the coverage of the article. Mr. Arnold remarked that, in paragraph 40 of the commentary, there was some wording to that effect, which, if considered appropriate, could be brought into the text itself. Ms. Kana confirmed that the Subcommittee would report on the advancement at the next meeting, in accordance with the mandate for a draft new technical service article to be included in the 2016 update of the Model Convention. The Chair thanked the Subcommittee, Ms. Kana and Mr. Arnold for their work in this area and welcomed the suggestion that, despite resource issues, a meeting of the Subcommittee be a high priority for 2015.

## **K. Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries**

92. In accordance with the mandate of the Subcommittee on Negotiation of Tax Treaties — Practical Manual, the Coordinator of the Subcommittee, Wolfgang Lasars, reported on progress in the work on developing a new practical Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2014/CRP.6). He began by reviewing the current mandate of the Committee related to the Negotiation Manual, included in Economic and Social Council resolution 2004/69, and historical developments in the work on the Negotiation Manual starting in 1967. He then reminded the Committee that the most recent version of the Negotiation Manual was published in 2003.

93. Mr. Lasars then recalled that the new Subcommittee, formed during the ninth session of the Committee, was mandated to present a draft of a new Negotiation Manual to the Committee at its eleventh session. He reported that the work was on track and summarized the outline and proposed structure for the new Negotiation Manual, as developed by the Subcommittee. He then briefed the members on the engagement of the drafters of the text of the Negotiation Manual for consideration by the Subcommittee and indicated that the first draft had been delivered and considered by the Subcommittee during its meeting in September 2014.

94. Mr. Lasars then posed a question to the Committee that emanated from the discussions of the Subcommittee. According to the mandate of the Subcommittee, the Negotiation Manual was to reflect the current version of the Model Convention and its commentary, as well as ongoing decisions of the Committee leading to changes in them. However, current developments and discussions within the OECD

project on base erosion and profit shifting, which had not yet been considered by the Committee, might be of interest to readers of the Negotiation Manual. Accordingly, the Subcommittee proposed that hints to the discussion of certain problems with existing rules in international taxation be included in the context of the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting.

95. During the ensuing discussion, it was raised that, by the time the draft Negotiation Manual was presented to the Committee, OECD would have finalized some of its solutions with regard to several actions on base erosion and profit shifting. Mr. Lasars responded that the new Negotiation Manual was to rest on decisions by the Committee, which would need time to reflect on the OECD solutions. It was then decided that the Negotiation Manual would include references to problems and possible solutions but that further updates would be undertaken in the following edition of the Negotiation Manual or electronically in the context of other capacity development activities.

## **L. Taxation of the extractive industries**

96. The Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Eric Mensah, presented the progress made in the work of the Subcommittee, based on his report on the subject (E/C.18/2014/CRP.3). He explained the Subcommittee's work over the past year and described the process, thanking South Africa and the United Republic of Tanzania for hosting the Subcommittee's meetings. He indicated that the workplan included ongoing work on:

- An overview note on issues in the extractive industries and how they were related.
- Capital gains taxation, including the issue of overseas "indirect sales".
- Value added taxation, including local content requirements.
- Tax treatment of decommissioning of extractive facilities at the end of their life cycles.
- Tax treaty issues as they related to the extractive industries.

97. The proposed workplan also included new work on:

- Effective review of invoicing and costs, including some of the issues that were often referred to as "trade mispricing".
- Permanent establishment issues for the extractive industries.
- Kinds of government "take" — the different forms of government taxation.
- Negotiation and renegotiation of contracts in terms of their fiscal aspects.

98. Mr. Lennard then presented the following draft guidance notes attached to document E/C.18/2014/CRP.3: (a) Overview note on extractive industries taxation issues (attachment A); (b) Capital gains taxation and indirect sales (attachment B); and (c) VAT in the extractives industry (attachment C).

99. Olav Fjellsa and Brian Twomey then gave a joint presentation on the fiscal aspects of decommissioning, addressed in attachment D to document E/C.18/2014/CRP.3. Charles Bajungu presented the experiences and recent

legislation of the Tanzania Revenue Authority in the area of capital gains taxation on indirect transfer of shares, the issue raised in attachment B. Tomas Balco then gave an overview of tax treaty issues in extractive industries taxation, based on the draft guidance note on selected treaty issues in relation to extractive industries (attachment E).

100. Mr. Lennard noted that there were important issues about transfer pricing in the area of extractives. Because different Subcommittees dealt with those two issues, liaison between the Subcommittees was important. This would be facilitated by the presence of some Committee members on both Subcommittees, and one possibility for the future was a joint meeting of the two Subcommittees on overlapping issues. In an information session on one such issue, Isaác G. Arias Esteban and Monique van Herksen introduced the concept of the so-called “sixth method” for pricing commodity transactions in some Latin American countries, based on publicly quoted commodity prices at a particular point of time. Mr. Esteban addressed Argentina’s experience of increasing revenues by adopting the “sixth method” and some similarities and differences in the method among Latin American countries. Ms. Van Herksen explained that the “sixth method” might be understood as a safe harbour anti-abuse rule that could help to address the weak administrative capacities of developing countries.

101. The Committee approved the workplan proposed by the Subcommittee and noted that the Subcommittee would be requesting public comments on all draft guidance notes until 16 February 2015. The Subcommittee was expected to meet again in April 2015 in New York. The Committee thanked the Subcommittee for its work in this matter, as well as all the presenters who provided valuable explanations.

## **M. Taxation of development projects**

102. Ms. Kana briefly introduced the issue of taxation of development projects by noting its presence on the Committee’s agenda for some time. She recalled that a paper on the tax treatment of donor-financed projects was presented at the third session of the Committee, in 2007, including draft guidelines prepared by the staff of the International Tax Dialogue Steering Group. Moreover, she noted that it was proposed that a joint meeting of donors and tax experts be held to discuss those guidelines but that this had not occurred.

103. In order to move this work forward, Ms. Kana proposed that a letter be sent inviting the Economic and Social Council to organize such a meeting in order to give an opportunity to development agencies and tax experts to discuss together the relevant issues. The Committee requested Ms. Kana to prepare a draft of the letter for discussion at the eleventh session.

## **N. Capacity-building**

104. Dominika Halka and Harry Tonino of the Secretariat reported on progress made in developing and implementing the United Nations capacity development programme on international tax cooperation (E/C.18/2014/CRP.7). Following an introduction, which included a brief overview of the institutional background, intergovernmental mandate, history and main features of the programme, they

reported on activities in each of the main focus areas. In the area of tax treaties, the most advanced activity was the United Nations Course on Double Tax Treaties, based on the 2011 Model Convention, which was delivered for the first time in March 2014 in Panama City.

105. It was noted that an introductory paper on tax treaties was drafted by Mr. Arnold (E/C.18/2014/5) and was included among the reading materials for the Course. Mr. Arnold then briefly introduced the paper, which addressed the legal nature and legal effects of tax treaties; the types of treaties dealing with tax matters; the process for negotiating tax treaties; the history of and differences between the United Nations and OECD Model Conventions; the content of a typical bilateral tax treaty; interaction between tax treaty articles; the relationship between tax treaties and domestic law; the objectives/purposes of tax treaties; and interpretation of tax treaties. Ms. Halka and Mr. Tonino then described progress made in other areas of the programme, including negotiation and administration of tax treaties, transfer pricing, tax base protection for developing countries and tax administration.

106. During the ensuing discussion, several Committee members and country representatives expressed their appreciation and support for the activities carried out under the programme. A call was made for the extension of the capacity development activities to Africa at the regional and subregional levels, including to the francophone countries, inter alia, through the translation of relevant materials into French. A view was also expressed that the shift in the Committee's working methods from the former Subcommittee on Capacity Development to the current Advisory Group and their respective mandates was the right decision by the Committee.

## **O. International trade in goods — tax issues**

107. Mr. Martino introduced the agenda item by noting that significant issues might arise with respect to the valuation of goods in international commerce, as transactions between related parties could be subject to both customs and fiscal examinations (including for transfer pricing purposes) and might thereby be affected by differing rules and interests.

108. After recalling that, for developing countries, particularly the least developed ones, indirect taxes, such as taxes on import, were normally the most important single source of government revenue, Mr. Martino proposed engaging with international organizations working in this area, as well as with other interested public and private stakeholders, in order to raise awareness of the aforementioned issues among developing countries and support them in effectively addressing those issues.

109. Several Committee members and representatives of the business sector recognized the relevance of such issues for developing countries and the importance of assisting them. Mr. Martino was asked to prepare a paper, for consideration at the eleventh session of the Committee, which would focus on the value that the Committee could add to work in this area for the benefit of developing countries, recognizing work on similar issues in other forums.

**P. Other matters**

110. The Committee remembered with great regret the passing of Frank Mullen (Ireland), an original Committee member. The respect and affection with which he was held were recalled.

111. The Committee confirmed that its workplan was predicated upon agreeing an updated version of the Model Convention at its twelfth session, in 2016, the last session of the current membership, for publication in 2017.

112. The Committee noted the great importance of ensuring that key products of the Committee's work, such as the Model Convention and the Transfer Pricing Manual, were translated into all official languages of the United Nations, to maximize effectiveness, and urged efforts, including by potential funders, to ensure that it was done as quickly as possible with the requisite quality.

## Chapter IV

### Dates and provisional agenda for the eleventh session of the Committee

113. The Committee decided to hold its eleventh session in Geneva from 19 to 23 October 2015.

114. The provisional agenda for the eleventh session will be as follows. The order of proceedings will be provisionally set by the Committee prior to the session:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
  - (a) Issues related to the updating of the United Nations Model Tax Convention:
    - (i) Article 1 (Persons covered): application of treaty rules to hybrid entities;
    - (ii) Article 5 (Permanent establishment): the meaning of “connected projects”;
    - (iii) Article 8 (Shipping, inland waterways transport and air transport):
      - a. The meaning and coverage of the term “auxiliary activities”;
      - b. The application of the article to cruise shipping;
      - c. Other commentary issues;
    - (iv) Base erosion and profit shifting;
    - (v) Article 12 (Royalties):
      - a. The meaning of “industrial, commercial and scientific equipment”;
      - b. Software payment-related issues;
    - (vi) Article 26 (Exchange of information): proposed Code of Conduct;
    - (vii) Taxation of services:
      - a. Article on technical services;
      - b. Other issues;
  - (b) Other issues:
    - (i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
    - (ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

- (iii) Taxation of the extractive industries;
  - (iv) Taxation of development projects;
  - (v) Capacity-building;
  - (vi) Dispute settlement: arbitration issues for developing countries and possible ways forward;
  - (vii) International trade in goods — tax issues.
4. Dates and provisional agenda for the twelfth session of the Committee.
  5. Adoption of the report of the Committee on its eleventh session.

## Chapter V

### Adoption of the report of the Committee on its tenth session

115. The Committee approved and adopted the present report for submission to the Economic and Social Council, with the text to be settled after the session.

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