



United Nations

Committee of Experts on International Cooperation in Tax Matters

**Report on the nineteenth session
(15–18 October 2019)**

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Note

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Chapter I

Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2019/252, the nineteenth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 15 to 18 October 2019. The session was attended by 21 Committee members and 165 observers. The present report contains a summary of Committee discussions held and any decisions taken at that session.

2. The provisional agenda and organization of work of the nineteenth session ([E/C.18/2019/4](#)) 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 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.

Chapter II

Organization of the session

Opening of the nineteenth session and adoption of the agenda

3. On 15 October 2019, the nineteenth 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 Acting Chief of the International Tax and Development Cooperation Branch of the Financing for Sustainable Development Office of the Department of Economic and Social Affairs, Caroline Lombardo, gave welcoming remarks on behalf of the Director of the Office, Navid Hanif.

4. In her remarks, Ms. Lombardo situated the Committee's work in its sustainable development context and reported on the relevant outcomes of the High-level Dialogue on Financing for Development held in New York on 26 September 2019, the first held since the adoption in 2015 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development. She underscored that the Dialogue embraced the important role of progressive tax systems and Sustainable Development Goal-oriented fiscal policies, which was not only to raise revenue to finance sustainable development, but also to reduce inequality, promote inclusive growth and protect the environment.

5. In that context, she noted that Dialogue participants had stressed the following five points:

(a) The compulsion to raise more taxes should not disproportionately burden the poor, women or other marginalized groups;

(b) Strengthened tax administration and collection were critical and must be accompanied by further transparency on budgets and expenditures, to foster tax morale and trust in government;

(c) Global action was needed to close loopholes and safeguard country efforts to mobilize domestic resources, including through tax cooperation that promoted favourable investment and trading climates that could generate jobs, expertise and a sense of independence, dignity and security;

(d) Tax-related illicit financial flows deprived present and future generations of vital resources for sustainable development; political will and concrete solutions were urgently needed to combat them;

(e) The role of the United Nations in international tax cooperation and in shaping norms and standards was critical to ensuring more inclusive processes and effective multilateral approaches.

6. Ms. Lombardo drew attention to the current challenges and opportunities confronting the Committee. She noted that the time had come to modernize tax rules for the benefit of all stakeholders. She emphasized, against the background of a recent proposal by the secretariat of the Organization for Economic Cooperation and Development (OECD) and the multiplication of perspectives on the relevant issues, the important role to be played by the Committee in ensuring that those rules would: (a) reflect the realities and priorities of countries in all situations; (b) catalyse sustainable development rather than put it at risk, and (c) operate as simply and transparently as possible. She noted that the United Nations would continue to play a critical role, alongside regional and international organizations, in discussions on taxation pertaining to the digitalized economy.

7. Ms. Lombardo also mentioned other important areas of work and tasks of the Committee, including the updates of the United Nations Model Double Taxation

Convention between Developed and Developing Countries, the United Nations Practical Manual on Transfer Pricing for Developing Countries and the United Nations Handbook on Selected Issues for Taxation of the Extractive Industries Taxation by Developing Countries and the development of guidance on taxation of official development assistance (ODA) projects, carbon taxation and dispute avoidance and resolution.

8. Ms. Lombardo acknowledged the generosity of Norway as the first contributor to a multi-donor project aimed at increasing support for the Committee, its Subcommittees and related capacity-development activities. She also acknowledged support by India and the European Commission for the subcommittee system. She noted that the Financing for Sustainable Development Office continued to seek further contributions to the multi-donor project.

9. The Co-Chair, Mr. Mensah, thanked Ms. Lombardo for her remarks and invited Committee members and participants to bear in mind those developments and suggestions in their work.

Chapter III

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

A. Procedural issues for the Committee

10. In a closed session, the Committee discussed ongoing work under the mandate of the Subcommittee on Practices and Procedures, specifically on issues related to treatment of minority views in the United Nations Model Double Taxation Convention between Developed and Developing Countries. The Committee requested that a paper be prepared on the topic for discussion, and possibly approval, at its twentieth session, to be held in New York in April 2020.

11. It was also agreed that the Subcommittee would review the practices and working methods in relation to the publication of submissions made both to and by the Committee, including submissions to Subcommittees.

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

12. The Committee discussed key topics that would be part of the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries, which was widely drawn upon by developing countries in their treaties. Discussions covered policy considerations underlying the application of tax treaties to collective investment vehicles; the concept of beneficial owner; and the possible modification of article 13, on capital gains, of the Model Convention, in order to address offshore indirect transfers of assets other than immovable property situated in source country.

Collective investment

13. Ms. Peters, in her capacity as Coordinator of the relevant Subcommittee, briefly summarized the discussion of the conference room paper on tax policy considerations related to the tax treaty treatment of collective investment (E/C.18/2019/CRP.20)¹ at the meeting of the Subcommittee held in Geneva on 11 and 12 October 2019.

14. Jacques Sasseville, of the secretariat of the Committee, described the main policy issues addressed in the note and informed the Committee that the Subcommittee had decided that the secretariat would prepare a paper on possible changes to the United Nations Model Convention and its commentary in relation to collective investment vehicles, pension funds and real estate investment trusts. That paper would be discussed at the next meeting of the Subcommittee, with a view to presenting the changes to the Committee for first discussion at its twentieth session.

15. Committee members and observers supported the Subcommittee's decision to continue its work on the tax treaty treatment of collective investment vehicles. The following are some of the main points made during their interventions:

(a) The treatment of collective investment vehicles was an important issue during treaty negotiations and the importance of collective investment justified providing additional guidance on the topic;

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

(b) The discussion of collective investment vehicles at the seventy-third congress of the International Fiscal Association, held in London in 2019, could provide useful information;

(c) While greater clarity was needed on the topic, changes to the United Nations Model Convention should not necessarily follow the commentary on the OECD Model Tax Convention on Income and on Capital, but should address, for instance, the interaction of possible provisions on the treatment of collective investment vehicles with the rules of article 1 (including the transparent entity provision of art. 1 (2)) and article 29, as well as the concepts of resident and beneficial owner;

(d) Work on the treaty treatment of collective investment vehicles had a direct link with work on the taxation of capital gains.

16. One member suggested that pension funds and real estate investment trusts raised different issues and should be dealt with separately, after the work on collective investment vehicles was concluded. It was observed, however, that the Subcommittee had decided that common issues arising with regard to all three types of vehicles would be dealt with together, while issues specific to pension funds and real estate investment trusts would be addressed separately.

17. An observer inquired as to whether the objective of the work was to come up with guidance similar to the mutual agreement reproduced in annex 1 of the conference room paper. In response, the secretariat of the Committee indicated that the annex provided an example of how issues related to collective investment vehicles could be dealt with through a mutual agreement procedure, in the absence of specific treaty provisions on such vehicles, whereas the inclusion of such provisions in a treaty would provide more certainty.

18. The secretariat indicated that the Subcommittee would work on proposed guidance to be presented for first discussion to the Committee at its twentieth session.

Beneficial owner

19. Turning to the conference room paper on the concept of beneficial owner (E/C.18/2019/CRP.21), the secretariat explained that the Subcommittee had generally endorsed the commentary changes proposed in the first part of the note. It had further agreed that those changes, which had appeared in the OECD commentary, had to be adapted to the specific characteristics of the United Nations Model Convention, which, unlike the OECD Model Convention, also uses the concept of beneficial owner in its articles 12 and 12A.

20. One member referred to his earlier written comments on a possible conflict between the proposed commentary clarification and the interpretative rule in article 3 (2). While the secretariat indicated that the words “paid to” formed part of the context in which the phrase “beneficial owner” was used and required a meaning different from that of domestic law, the member suggested that it would be better to include a definition of beneficial owner in the articles of the United Nations Model Convention than to provide a commentary clarification.

21. Different views were expressed concerning that suggestion and concerning the role of the beneficial owner concept. Following the discussion, it was decided that the Subcommittee would examine the suggestion to include a new treaty definition of beneficial owner in the United Nations Model Convention at its next meeting.

22. The Committee then discussed the second part of the note, which contained proposed drafting changes to articles 10, 11 and 12 to address cases where the beneficial owner and the direct recipient of dividends, interest and royalties were

residents of different States. While there was general agreement with the results of the proposed changes, one member suggested that it would be enough to clarify the issue in the commentary and that changing articles 10, 11 and 12 might be problematic as regards the taxing rights of the State of residence.

23. The secretariat expressed the view that the right of the State of residence to tax would not be affected by a change to a provision dealing exclusively with the taxing rights of the State of source. Two other members supported making the proposed change in articles 10, 11 and 12 as proposed in the conference room paper, with necessary adaptations to reflect the fact that the United Nations Model Convention, unlike the OECD Model Convention, allowed for source taxation of royalties and fees for technical services. The matter would be further considered at Subcommittee level.

Capital gains

24. In her capacity as Subcommittee Coordinator, Ms. Peters introduced the conference room paper on the taxation of capital gains (E/C.18/2019/CRP.22). She explained that the paper provided a policy analysis of the current tax treaty rules for the taxation of capital gains. It was prepared as a follow-up to the discussion, held at the eighteenth session, of a proposal to address the issue of offshore indirect transfers by including in article 13 of the United Nations Model Convention the alternative provision currently found in paragraph 18 of the commentary on article 13.

25. Ms. Peters invited the Committee to discuss the following four questions, included in paragraph 53 of the note, and shared the results of the Subcommittee's prior consideration of the issue:

- **Should the United Nations Model Convention be modified to allow for taxation at source of all capital gains, with the exception of gains from the alienation of ships or aircraft operated in international traffic?** The Subcommittee had responded that it should not.
- **Should paragraph 18 of the existing commentary to article 13 be redrafted to clarify the scope of the alternative provided in that paragraph?** The Subcommittee had agreed that paragraph 18 of the commentary should be amended to clarify that the alternative provision included in that paragraph, if read literally, would render paragraphs 1, 2, 4 and 5 useless and misleading. It had also agreed that no attempt should be made to amend the alternative provision in order to provide an agreed source rule for gains that would be subject to source taxation, but that the difficulties that would arise from a mere reference to domestic source rules, in particular in relation to double taxation risks, should be briefly described.
- **If the Committee wishes to tax offshore indirect transfers only in cases of abuse, would the widespread adoption of the principal purpose test be sufficient to address the issue?** The Subcommittee had replied that such action would not be sufficient to address the issue, as that could restrict the work on possible changes related to the taxation of gains from offshore indirect transfers to cases of abuse.
- **Should a targeted provision for the source taxation of some offshore indirect transfers be drafted?** The Subcommittee had agreed that it should attempt to draft a specific provision allowing source taxation of gains on offshore indirect transfers. That provision would include an unspecified requisite level of ownership by the transferor. It would also include source rules in the same way as the current provisions of article 13 included their own source rules. Unlike the draft alternative provision included in annex B of the conference room paper, however, the provision would not replace article 13 (4),

but would be a stand-alone provision that would apply, subject to article 13 (4) and (5). That provision would only cover the indirect transfer of property with respect to which the source country had source taxing rights in case of a direct alienation. In that regard, the Subcommittee had discussed whether article 13 of the United Nations Model Convention should allow for the source taxation of gains on a direct alienation of derivatives and securities issued by resident companies (or related to resident companies) and the type of property described in subparagraph (d) of the provision included in annex B, namely, “a right granted under the law of the other State that is used or exercised exclusively or almost exclusively in the other State”. While there was no agreement as to whether such provisions concerning direct alienations should be adopted and, if so, whether they should be included in article 13 itself or in its commentary, the Subcommittee had agreed that draft provisions to that effect should be discussed at its next meeting.

26. One member stressed the importance of adding a new rule to article 13, allowing the source taxation of direct transfers of securities and derivatives. It was observed, however, that this issue was distinct from the issue of whether a provision on offshore indirect transfers should be added to article 13.

27. Other members stressed the importance of the issue of offshore indirect transfers for developing countries and expressed support for designing a rule that would allow for the source taxation of gains on such transfers.

28. An observer noted that the combination of article 13 (4) and the broad definition of “immovable property” might already provide a mechanism for taxing some indirect transfers of rights related to the exploitation of natural resources. This could be clarified in the commentary on any new provision related to offshore indirect transfers.

29. In response to an observer’s question about whether the proposed provision would indicate how the gain would be taxed, the secretariat of the Committee indicated that any new provision would likely follow the general approach of article 13, which left it up to the domestic law of each State to determine how a gain should be computed and taxed.

30. One observer suggested that there might be an inconsistency between article 13 (6) dealing with residual capital gains and article 21 (3) dealing with other income. The secretariat responded that article 21 (3) dealt with income not covered by other treaty provisions, whereas in article 13 (6), the principle of exclusive residence taxation was recognized with regard to capital gains not sourced to a country under the provisions of paragraphs 1 to 5, in the same way that article 7 (1) provided for the exclusive residence taxation of profits not attributable to a permanent establishment.

31. One member suggested that it might still be worth looking more generally at the question of source taxation of capital gains. Another member suggested that the relationship between the taxation of capital gains under article 13 and the taxation of other income under article 21 might be explored at a later time, as could the issue of taxation of capital under article 22.

32. Two country observers expressed concern about the drafting of new rules that would broaden source taxation rights under article 13 beyond cases of abuse. For those observers, a new rule on offshore indirect transfers, as suggested in annex B of the Subcommittee paper, would raise issues with respect to the elimination of double taxation and administrability.

33. The Coordinator thanked the Committee for its contributions and for its support for the Subcommittee’s decision to work on a treaty provision that would allow for source taxation of capital gains on offshore indirect transfers not already covered by

article 13 (4). That decision did not, however, prejudice the issue of whether such a provision would be included in article 13 of the United Nations Model Convention or presented as an optional provision in the commentary.

34. The Committee endorsed the Subcommittee's decision to adopt the interpretation included in paragraphs 60 to 62 of the conference room paper on capital gains (*ibid.*), concerning the application of article 13 (5) of the United Nations Model Convention in the case of shares held through a transparent entity. The Subcommittee would prepare proposed changes to the commentary on article 13 to reflect that conclusion.

35. Following that discussion, one member emphasized the administrative difficulties of enforcing a rule that would allow for the source taxation of gains on offshore indirect transfers. The member suggested that a change to article 13 was not envisaged in the work programme of the Subcommittee and might be better discussed after the finalization of the toolkit on the taxation of offshore indirect transfers by the Platform for Collaboration on Tax. It was recalled, however, that work on a possible new treaty rule on the source taxation of gains on such transfers had been recommended by the previous Committee membership in its report on the fourteenth session (see [E/2017/45-E/C.18/2017/3](#), para. 61).

36. At the end of the discussion, Mr. Sasseville indicated that the Subcommittee would also draft commentary changes, to be presented at the next Committee meeting, in relation to the issue described in the conference room paper on the application of the limited force-of-attraction rule of article 7 (1) United Nations Model Convention to engineering, procurement and construction contracts (E/C.18/2019/CRP.27).

37. Rajat Bansal, Coordinator of the Subcommittee's subgroup to examine issues on taxation of software payments as royalties, invited the Committee to submit written comments by 30 November 2019 on the conference room paper on the taxation of software payments as royalties (E/C.18/2018/CRP.9), which had been presented at the seventeenth session.²

38. Ms. Peters informed the Committee that the next meeting of the Subcommittee would be held in the Netherlands, on 15 and 16 February 2020.

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

39. The Committee addressed the role of taxation in effectively raising domestic resources to finance the achievement of the Sustainable Development Goals. Harry Tonino of the Committee secretariat made reference to two papers, presented at previous sessions, on linkages between the work of the Committee and the implementation of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda (see E/C.18/2019/CRP.19 and [E/C.18/2019/2](#), presented at the seventeenth and eighteenth sessions, respectively). In those papers, the secretariat had elaborated on the role of fiscal policies in the broader framework of the United Nations sustainable development agenda, including in three focus areas: environmental protection, the informal economy and gender equality.

40. Mr. Tonino recalled the Committee's request that the secretariat, in coordination with the focus group on taxation and the Sustainable Development Goals, further communicate the links between the Committee's work and sustainable development; promote and facilitate further engagement of the Committee in United Nations strategies and activities related to sustainable development; and ensure that the

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

Committee's work and inputs would feed into, and leverage, relevant United Nations initiatives and meetings.

41. Mr. Tonino reported on several meetings that featured discussions of the role of fiscal policies in supporting the achievement of the Sustainable Development Goals, as well as on relevant Committee work and guidance with regard to that role. Those meetings included the Economic and Social Council forum on financing for development follow-up, held in New York from 15 to 18 April 2019; the special meeting of the Economic and Social Council on international cooperation in tax matters, held in New York on 29 April; the high-level political forum on sustainable development convened under the auspices of the Economic and Social Council, held in New York from 9 to 18 July; the Sustainable Development Goal summit, held in New York on 24 and 25 September; and the high-level dialogue on financing for development, held in New York on 26 September. He also reported on a regional capacity-building event on tax measures in support of the Goals, held in Nairobi from 10 to 13 June 2019.

42. Key messages and takeaways from the above-mentioned meetings were summarized as follows:

(a) Fiscal policies needed to be strengthened, both on tax revenue collection and on expenditure, and aligned with national sustainable development strategies;

(b) Progressive and redistributive tax policies and more inclusive expenditure programmes might help to reduce social and economic inequality, including gender inequality;

(c) It was critical to strengthen tax administrations and enhance personal and corporate tax collection, including by bringing wealthy individuals and businesses into the formal economy;

(d) Further transparency on budgets and expenditures was needed to foster tax morale and trust in government institutions;

(e) Environmental taxation could play a key role in supporting the transition towards a greener economy, by promoting more sustainable production and consumption patterns;

(f) Environmental taxes should be targeted to the specific socioeconomic situation of each country and take into account any potential regressive effects, to ensure that they did not negatively affect the most vulnerable and that they helped to address poverty and inequality;

(g) Reforms of corporate tax rules applicable to cross-border transactions, including digital transactions, should include consideration of revenue implications for all countries and their impact on broader sustainable development objectives;

(h) The voice of the United Nations in international tax standard-setting was key to promoting multilateral approaches and ensuring inclusive processes;

(i) International tax cooperation was critical to supporting global action against illicit financial flows, tax evasion and tax avoidance.

43. The secretariat outlined the tax-related priority areas in the strategy of the Secretary-General for financing the 2030 Agenda and the associated road map, including the following:

(a) Strengthening international cooperation to promote financial and economic policies in support of the Sustainable Development Goals;

(b) Increasing domestic resource mobilization and enhancing the composition, effectiveness and efficiency of public spending;

(c) Curbing illicit financial flows.

44. The road map also served to identify key related actions and tools, including the following:

(a) Global norms, principles and policies aligned with the Sustainable Development Goals;

(b) Inclusive and effective cooperation on international tax matters, including on frontier issues, such as taxation in the digitalized economy, environmental taxation and taxation of the informal economy;

(c) Integrated national financing frameworks to mobilize and effectively manage financial and non-financial resources to support the achievement of national sustainable development strategies;

(d) Sustainable Development Goal-responsive (including gender-responsive) revenue and expenditure systems and strengthened international and regional cooperation and country capacity to curb illicit financial flows, tax evasion and tax avoidance.

45. In the ensuing discussion, the Committee asked the secretariat to continue to promote and support the Committee's engagement in relevant United Nations sustainable development-related meetings and initiatives. As a concrete step towards providing increased support at the country level, the Committee also encouraged the secretariat to expand its capacity-building activities to further assist countries in dealing with the tax-related aspects of implementing the Sustainable Development Goals. It was noted that those activities could build upon the model of the above-mentioned capacity-building workshop held in Nairobi in June and be focused on selected issues under the overarching theme of taxation and the Sustainable Development Goals, including the following:

(a) Environmental taxation;

(b) Taxation of the informal economy;

(c) Gender-responsive fiscal policies;

(d) Wealth and inheritance taxation;

(e) Action to curb illicit financial flows.

46. It was suggested that those activities should take into account the data and statistical capacity needed to design and implement policies and guidance in those areas; feature evidence-based analysis; and foster country and regional sharing of experiences and peer learning. It was also recommended that those initiatives be implemented in collaboration with other relevant stakeholders. Lastly, it was recommended that the matters before the various Subcommittees that could most affect domestic resource mobilization be accelerated as much as possible, in accordance with agreed mandates and timetables, for completion during the terms of the Committee's current membership, wherever realistically possible.

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

47. The Committee is working on a new version of the Practical Manual on Transfer Pricing for Developing Countries, including new content on financial transactions and profit splits. The Co-Coordinator of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, Ingela Willfors and Stig Sollund, introduced the agenda item to the Committee at its nineteenth session. Ms. Willfors presented the

conference room paper on the work of the Subcommittee (E/C.18/2019/CRP.15) and reported on the progress made since the Committee's previous session, as well as on next steps. She reported on the most recent Subcommittee meeting, held in Amsterdam from 2 to 4 July 2019, which had been focused mainly on the proposed chapter on financial transactions and on the other workstreams currently being undertaken. She also informed the Committee that the next Subcommittee meeting would be held in Nairobi, from 2 to 4 December 2019, back-to-back with an intermediate-level capacity-development event, to be held on 5 and 6 December.

48. Monique van Herksen of the Subcommittee presented the new chapter on financial transactions (*ibid.*, attachment A), which had been in large part discussed by the Committee at its eighteenth session. On the basis of that discussion and of the written comments received, the Subcommittee had worked on the chapter at its meeting in Amsterdam; the chapter was now being presented for discussion and final approval.

49. Ms. van Herksen noted that the chapter discussed the fundamental importance of financial transactions; the choice to finance transactions and operations through debt or equity; the fiscal decisions necessary for a multinational enterprise group, noting that those decisions could lead to base erosion, as interest was often deductible; what financing departments in such a group might look like; and common types of intragroup financial loans and financial guarantees and the transfer pricing aspects related thereto.

50. Ms. van Herksen explained that the text was not exhaustive; rather, it served as an updated practical introduction to the topic, addressing matters of particular relevance to developing countries. The economically significant characteristics of financial transactions were discussed, as was a life-cycle approach and three non-prescriptive perspectives on the application of the arm's length principle. One member asked why the chapter did not make reference to the possibility of using, in appropriate circumstances, the group credit rating approach used in pricing intragroup loans, guarantee fees and other related party financial transactions, which could be a simplifying aspect for developing countries.

51. Ms. van Herksen noted that some practical examples were being developed by the Subcommittee to clarify the guidance, and that these would be presented to the Committee for discussion and possible approval during its twentieth session.

52. Ms. Willfors next presented the Subcommittee's work on a substantial revision to the guidance contained in the Manual, on the transactional profit-split method (*ibid.*, attachment C), as previously discussed by the Committee at its eighteenth session. On the basis of that discussion and of written comments received, the Subcommittee had further developed the guidance at its meeting in Amsterdam and now presented it for discussion and final approval. A key focus was aligning the guidance with the work done in the context of the Inclusive Framework on Base Erosion and Profit Shifting, while providing more practical guidance in the examples in situations useful for developing and especially least developed countries.

53. Ms. Willfors presented a draft revision of the chapter on comparability analysis for first discussion (*ibid.*, attachment B). She noted that the main purpose of this updated guidance on comparability was to seek consistency between the Manual and the *Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* of the Platform for Collaboration on Tax.

54. Mr. Sollund presented the Subcommittee's work on centralized procurement functions (*ibid.*, attachment D) for first discussion. He recalled its aim to provide broader and more in-depth transfer pricing analysis and guidance in considering not only group

synergies and cost savings, but also security of supply, sourcing and managing of procurement risks, an area where developing countries had sought more assistance.

55. Mr. Sollund indicated that part A of the existing Manual, on transfer pricing in a global environment, was under revision to include more background on how multinational enterprises operated amid increasing digitalization. In addition, other Subcommittee workstreams and other parts of the Manual were under revision to eliminate any overlaps and repetitions, improve the flow of themes and issues and increase the practicability of the Manual. Some of these improvements would be presented to the twentieth session.

56. Mr. Sollund next presented, also for first discussion, an updated and revised chapter C.1, which would merge and update the former chapter B.8 on the general legal environment and the former chapter C.1, on establishing and updating transfer pricing regimes (*ibid.*, attachment E).

57. Lastly, Mr. Sollund presented for discussion and final approval a draft of the work on chapter C.2, on establishing transfer pricing capability in developing countries (previously chap. C.5), chapter C.4, on risk assessment (previously part of chap. C.3), and chapter C.5, on transfer pricing audits (*ibid.*, attachment F). The purpose was mainly to streamline the sequences of presentation and to eliminate overlaps in the current text. He noted that no comments had been received requiring amendments to the draft following the eighteenth session, although a reference to the experience of Kenya had been added.

58. Several Committee members and other participants took the floor supporting, and stressing the importance of, the work of the Subcommittee, in particular for developing countries.

59. The Co-Chair concluded that the Committee had approved the three texts on financial transactions, on profit splits and on practical implementation, establishing transfer pricing capability, risk assessment and transfer pricing audits, included in attachments A, C and F of the conference room paper.

60. The Co-Coordinator invited the Committee to submit written comments on attachments B, D and E by 1 November 2019.

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

61. The Co-Coordinator of the Subcommittee on the Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries, Eric Mensah, presented the conference room paper on the issue (E/C.18/2019/CRP.24). He indicated that the Subcommittee had met in Aberdeen, United Kingdom of Great Britain and Northern Ireland, in August 2019, where four documents had been discussed. Three chapters were still being worked on at the Subcommittee level: on production-sharing contracts; on the taxation of subcontractors; and on financial transactions.

62. Mr. Mensah noted that a chapter on tax incentives had been drafted and discussed extensively during the aforementioned Subcommittee meeting and was now presented to the Committee for discussion and guidance, with a view to its final approval at the twentieth session. Alexandra Readhead and Chris Sanger of the Subcommittee presented the draft chapter.

63. Committee members commenting on the work conducted by the Subcommittee acknowledged the importance of the inclusion of tax incentives in a handbook geared especially for developing countries.

64. A member suggested that work should be done on the impact of other tax policies that could affect tax incentives, similar to the work done on transparency and the exchange of rulings under action 5 of the Action Plan on Base Erosion and Profit Shifting and the “pillar one” and “pillar two” proposals of the Inclusive Framework.

65. Another member asked if pillar two of the work currently being done by OECD on taxation of the digitalized economy in the context of the Inclusive Framework would put an end to tax incentives and whether there were preliminary views on whether there should be carve-outs from pillar two to safeguard tax incentives in the extractive industries. It was noted that that issue had not been fully discussed in the Subcommittee and discussion or recommendations on the issue would be communicated to the Subcommittee on Tax Challenges Related to the Digitalization of the Economy.

66. An observer inquired if developing countries have been asked to sign up with the Extractives Industry Transparency Initiative. The observer also suggested adding to the governance discussion in the Chapter that all incentives should be formally approved by the relevant minister of finance. Ms. Readhead acknowledged the importance of the comments and noted the discussion on these aspects could be expanded.

67. Another observer emphasized that economic analysis was essential to the evaluation of incentives, but recognized that it was difficult to capture the counterfactual. A third observer called for more examples and content on anti-abuse provisions in the Handbook.

68. It was agreed that the Subcommittee would continue to work on the comments received during the nineteenth session, in order to finalize the chapter on tax incentives, as well as on the papers developed and discussed during the most recent Subcommittee meeting, which would be presented for first consideration to the Committee at its twentieth session.

F. Dispute avoidance and resolution

69. During the session, the Committee advanced work on its proposed handbook on tax dispute avoidance and resolution. The Co-Coordinator of the relevant Subcommittee, George Obell and Cezary Krysiak, presented the two conference room papers submitted under the item (E/C.18/2019/CRP.17 and E/C.18/2019/CRP.18).

70. Mr. Krysiak indicated that the papers had been prepared following a meeting of the Subcommittee hosted by the Ministry of Finance of Poland, held in Warsaw from 1 to 3 July 2019. He noted that the Subcommittee remained on schedule to deliver the complete handbook at the final meeting of the current membership of the Committee, to be held in April 2021. He invited the Committee to discuss and approve the revised version of chapter 3, on domestic dispute resolution mechanisms (first discussed at the eighteenth session), included in the paper on that chapter (E/C.18/2019/CRP.17). There were no interventions, and the chapter was approved by the Committee.

71. Mr. Krysiak explained that, as indicated in paragraphs 4 to 6 of the second paper (E/C.18/2019/CRP.18), the Subcommittee had decided to reorganize and renumber the two draft chapters that now appeared as chapter 5, on mutual agreement procedure arbitration, and chapter 6, on possible improvements to the mutual agreement procedure. It was thus now proposed that the handbook be divided into two parts:

(a) Part 1 would be focused on tax disputes generally, whether based on domestic law or treaties, and would include chapter 1, providing an introduction and overview (to be drafted), chapter 2, on dispute avoidance mechanisms (to be presented for first discussion at the twentieth session), and chapter 3, on domestic dispute resolution mechanisms;

(b) Part 2 would deal exclusively with the mutual agreement procedure and would include the existing chapter 5, on the mutual agreement procedure (already approved but to be renumbered as Chapter 4), the new chapter 5, on mutual agreement procedure arbitration, and the new chapter 6, on possible improvements to the mutual agreement procedure.

72. The Committee endorsed those approaches.

73. Regarding the new draft chapter 5, on mutual agreement procedure arbitration, the secretariat of the Committee indicated that a few written comments remained to be discussed at the February 2020 meeting of the Subcommittee. There were no other interventions on that draft chapter.

74. Regarding the draft chapter 6, on possible improvements to the mutual agreement procedure, the discussion was focused exclusively on the three questions contained in paragraph 7 of the second paper, related to the section on mutual agreement procedure mediation, as follows:

- **Does the Committee consider that mediation would be helpful in mutual agreement procedure cases and should therefore be suggested as a possible improvement?** Different views were expressed on whether the possible use of mediation should be mentioned in chapter 6. After a number of interventions on this matter, the Co-Chair suggested that the section on mediation be kept in the chapter but that it be presented in a more succinct and neutral way, namely, without suggesting that mediation would necessarily be an improvement and with the addition of explanations as to why mediation did not affect a country's treaty obligations to endeavour to resolve mutual agreement procedure cases and why there was no need to have anything in a treaty to allow for the use of mediation. The Committee endorsed that approach, and the secretariat was invited to propose changes to that effect in the revised draft, which would be discussed by the Subcommittee at its February 2020 meeting.
- **Should the section on mutual agreement procedure mediation include a short description of a country's experience with mediation in the context of domestic dispute resolution?** Given the discussion on the previous question, it was agreed that chapter 6 would not include any reference to the experience of some countries with domestic mediation, notably because of the differences between mutual agreement procedure and domestic dispute resolution and because the domestic use of mediation would be covered in chapters 2 and 3.
- **Should the case study outlined in section 6.6.5 be included in the chapter and, if so, should it be modified, and should it be kept where it is or divided into different parts?** The Committee did not discuss these questions in enough detail to reach conclusions. It was agreed that the Subcommittee would deal with them at its next meeting and report back to the Committee.

75. Mr. Krysiak concluded the discussion by recalling the invitation, in paragraph 7 of the paper on chapters 5 and 6, that Committee members and country observers wishing to send written comments on the preliminary drafts of chapters 5 and 6 should do so by email to the secretariat before 29 November 2019. Those comments would be discussed at the February 2020 meeting of the Subcommittee, which would be held in The Hague, Netherlands. The revised version of the two chapters would be presented to the Committee for approval at its twentieth session.

G. Capacity-building

76. The Committee secretariat informed the Committee about its most recent and forthcoming capacity-building activities. Harry Tonino provided an update on the

progress made in implementing and further developing the Department for Economic and Social Affairs capacity-development programme in financing for sustainable development. He noted that work was focused on the following three strategic priorities: (a) to continue to deliver capacity-building activities on tax treaties, transfer pricing and tax base protection issues for developing countries; (b) to further strengthen the dynamic interactions of capacity development with policy work to increase impact at the country level; and (c) to respond to new demand for support at the country level, including in new areas related to tax cooperation and to achieving the Sustainable Development Goals.

77. Mr. Tonino reported on global and regional training, including two back-to-back courses on the practical application of the mutual agreement procedure and the negotiation of tax treaties, held in Vienna from 8 to 19 July 2019, in cooperation with OECD and the World Bank; a workshop on tax base protection and measures in support of the Sustainable Development Goals, held in Nairobi from 10 to 13 June 2019, in collaboration with the African Tax Administration Forum and Tax Justice Network Africa; and two back-to-back courses on tax treaty negotiation and practical aspects of the mutual agreement procedure for francophone countries, held in Dakar from 16 to 25 September 2019, in collaboration with the International Organization of La Francophonie.

78. Mr. Tonino also reported on country-level training and technical cooperation activities, including a workshop on transfer pricing, held in Ulaanbaatar from 3 to 7 June 2019, in cooperation with Strengthening Extractive Sector Management in Mongolia, an initiative funded by Global Affairs Canada; a technical assistance mission on double tax treaties, held in La Paz from 12 to 21 August 2019; and a course on double tax treaties, given in Bogota from 19 to 23 August 2019. Plans were outlined for a follow-up technical cooperation mission to Colombia and country-level workshops on double tax treaties to be held in Ecuador and Peru before the end of 2019. Moreover, a report was presented on online courses on double tax treaties and transfer pricing, available in English and Spanish, in which more than 1,200 participants from 52 countries in different regions across the world had enrolled. It was also noted that the online course on double tax treaties had been recently launched in French.

79. The secretariat elaborated on initiatives aimed at further strengthening the synergies between capacity-building and tax policy work, including plans for a regional workshop on transfer pricing, to be held in Nairobi in early December 2019, back-to-back with a meeting of the Subcommittee on Transfer Pricing; a workshop on implications of the digitalized economy for developing countries, to be held in New York in early March 2020; and a workshop on environmental taxation, to be held in the second half of 2020, back-to-back with a meeting of the Subcommittee on Environmental Taxation Issues.

80. Michael Lennard of the secretariat noted that the aim of the proposed workshop on taxation of the digitalized economy would be to bring together the expertise of OECD, the United Nations and other international organizations, the business community, academia and civil society, through presentations and dialogues, in order to help to equip high-level advisers, negotiators and implementation actors to most effectively identify and evaluate options and to respond to challenges affecting and opportunities involving their countries.

81. In follow-up to a request by the Committee to expand capacity-development activities to support countries in dealing with tax-related aspects of Sustainable Development Goal implementation (see paras. 45 and 46 above), the secretariat outlined tentative plans for and key features of such activities.

82. Progress made in supporting interdivisional and inter-agency capacity-development efforts in the area of financing for sustainable development was also

noted, including with respect to a project aimed at strengthening the capacity of the least developed countries to develop evidence-based, coherent and well-financed strategies to implement the 2030 Agenda; a project on subnational finance to support local governments in the application of comprehensive municipal asset management; and the work of the Platform for Collaboration on Tax, a joint initiative of the secretariats of the International Monetary Fund, OECD, the United Nations and the World Bank.

83. Several members of the Committee commended the work done by the Financing for Sustainable Development Office in the context of the Department's capacity-development programme. The Committee asked the secretariat to continue to deliver its capacity-building activities for the benefit of developing countries and supported plans to respond to new demand in the area of tax-related aspects of Sustainable Development Goal implementation. The Committee stressed the importance of delivering activities and making relevant materials available, not only in English, but also in French and Spanish. The Committee also invited the secretariat to continue its outreach efforts to further disseminate its work, including in collaboration with regional organizations and other relevant stakeholders.

H. Environmental tax issues

84. The Committee discussed key topics in environmental taxation, including policy design for a carbon tax, its implementation and how any tax exemption would work, depending on the country context. The Coordinator of the Subcommittee on Environmental Taxation Issues, Natalia Aristizábal Mora, presented a brief summary of activities since the eighteenth session, as outlined in the conference room paper on Subcommittee activities (E/C.18/2019/CRP.23). She indicated that the outline of the planned handbook on carbon taxation presented at the previous session had been somewhat modified for clarity, while taking into account the comments and suggestions received. In particular, the chapter on the design of a carbon tax would be subdivided into three parts: subchapter 3A, on the basic elements in designing a carbon tax; subchapter 3B on the setting of a carbon tax rate; and subchapter 3C on addressing undesired effects on households and industries.

85. Ms. Aristizábal Mora described the new structure as more suited to an easy-to-read handbook, with the more technical elements, such as economic theory and history, relegated to annexes. She also noted that a new section at the beginning of each chapter would serve as a checklist of key items that policymakers would need to pay attention to when electing to introduce a carbon tax.

86. Ms. Aristizábal Mora invited the Committee to submit comments, especially on the clarity of the new reorganization of the handbook and the chapter in question, the usefulness of the checklist, and any other topic that may need to be added or developed. She indicated that the Subcommittee intended to add a few more sections in subchapter 3C on such issues as border tax adjustments and a carbon tax, as part of a broader tax reform.

87. Presenting the proposed chapter 3 on key aspects for the design of a carbon tax, Susanne Åkerfeldt, a member of the Subcommittee and a senior adviser at the Ministry of Finance of Sweden, highlighted the necessity of identifying which level of government had the power to levy the tax: national, subnational or, in the case of the European Union, for example, regional. She noted that cooperation among the different branches of government would be key to carbon tax policy success, with a need to define clear responsibilities, such as the role of the relevant environmental agency and the ministry of finance. She indicated that necessary collaborations would be elaborated on in the chapter on the implementation of a carbon tax.

88. Ms. Åkerfeldt then described two important approaches in the carbon tax design, namely the fuel approach, which was based on a tax on the volume or weight of fossil fuels used, and the direct emissions approach, which addressed activities owned or controlled by an organization that released emissions straight into the atmosphere.

89. Ms. Åkerfeldt also listed the pros and cons associated with each approach. She then talked about carbon taxation in the context of commercial air transport and international maritime transport, which presented specific challenges.

90. Robin Damberger of the Institute for Austrian and International Tax Law, a Subcommittee member, described the four different approaches most often used in setting a carbon tax rate. The Pigouvian approach was based on the external cost of carbon emissions, with a tax rate set at a level offsetting that cost; the standard and price approach was aimed primarily at reaching a specific emissions reduction target; the revenue target approach involved proposing a rate based on a preset amount of revenue to be collected; and the benchmarking approach involved setting a tax rate that took into account the carbon tax experiences of other jurisdictions.

91. Mr. Damberger discussed the consequences of using a static tax rate and the ramp-up introduction approach, intended to be adjusted over time. Whichever approach was chosen, and what the rate associated with it over time would be, would depend on other factors, such as the political or regional context, the social acceptance of such a policy and any applicable international agreements.

92. Addressing the undesired effects of a carbon tax on households and industries, Karl-Anders Stigzelius of the Ministry of Finance of Sweden pointed out the somewhat regressive character of a carbon tax, which tended to negatively affect low-income families in a country. He also underscored the possible cost increases for businesses and the potentially negative impact on overall competitiveness of the national economy, especially if other economic partners in the region did not adopt similar policies. He stressed the necessity for accompanying measures to mitigate the undesired effects of a carbon tax.

93. The ensuing discussions centred on the need for policymakers to work on providing information to the public on the environmental costs due to carbon emissions and the behavioural changes needed to reduce such costs, and even reverse course for a better future. The need for concerted efforts among countries to avoid unfair competition was also mentioned.

94. Committee members supported the new structure of the handbook and the subdivision of the chapter on carbon tax design. Some comments included recommendations to pay attention to the impact of raising revenue through a carbon tax and its external costs and to provide guidance on how to mitigate such costs and how to avoid social unrest, among other negative impacts.

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

95. The Co-Coordinator of the Subcommittee on Tax Challenges Related to the Digitalization of the Economy, Aart Roelofsen, explained that a paper had been produced by the Subcommittee, distributed to Committee members and discussed at the most recent Subcommittee meeting, where it was decided that it would not be published on the United Nations website. He indicated that the Subcommittee would continue to work on the paper, while looking for the best solutions for developing countries in particular, by taking an independent approach that remained informed by wider developments.

96. Stewart Brant of the OECD secretariat then presented to the Committee the unified approach to pillar one, under the OECD secretariat proposal published on 9 October 2019. Key elements of the proposal were: issues of scope, including a size threshold; nexus and profit allocation rules; the elimination of double taxation; and dispute prevention and resolution. Amount A was treated by the proposal as a new taxing right, while amounts B and C were not seen as creating new taxing rights, but rather as improving on or slightly modifying the arm's length principle as a framework.

97. Mr. Brant noted that further discussion would be needed on suggested carve-outs for extractives industries and commodities, and perhaps for some types of financial services.

98. Mr. Brant took questions from the floor. Issues raised included the following:

- (a) The need for, and availability of, specific data under the unified approach;
- (b) The basis upon which extractives and, potentially, financial services would be carved out;
- (c) How the unified approach would deal with outsourced activities;
- (d) The segmentation and accounting approaches, including with regard to adjustments, to be taken;
- (e) The dispute resolution mechanisms under discussion with respect to amount C and to what extent they would apply to other amounts;
- (f) The connections and interactions between amounts A, B and C in the proposal, including potential overlaps in amounts A and C and whether amount B was an elective safe harbour for taxpayers or a bright-line test not subject to election;
- (g) The likely borderline between ordinary and residual profits;
- (h) Whether the proper balance had been struck between administration and compliance costs;
- (i) Whether companies would fluctuate in and out of amount A from one year to the next, depending on whether or not they meet the size threshold, whether amount A would be rebuttable or appealable and whether the dispute prevention and resolution mechanisms for all three amounts would be the same;
- (j) How a high-threshold amount, such as €750 million, might affect the allocation of amount A to the least developed countries;
- (k) To what extent the impact assessments being prepared by OECD and others would be available early enough to help Governments to evaluate the OECD secretariat proposal and alternative options;
- (l) The need to consider the effects on economic growth and jobs, in addition to tax revenue impacts, and for analyses to be on a dynamic basis;
- (m) How the interests of developing countries were being taken into account in the process associated with the Inclusive Framework on Base Erosion and Profit Shifting.

99. Mr. Brant gave responses on many of those issues, while noting that a number of issues had been left open in the paper, which itself remained under discussion in the context of the Inclusive Framework.

100. The Committee then focused its discussion on how the Subcommittee's work would be taken forward. The following points were made by various members:

- (a) As an immediate priority, the Committee should consider and articulate the interests of developing countries in relation to the proposal of the OECD

secretariat, with a view to ensuring that the concerns and interests of the least developed countries were taken into consideration;

(b) The Inclusive Framework would benefit from such input from the Committee, which would allow the Committee to help in shaping a global solution;

(c) The unified approach could have been improved by adopting more of the significant economic presence approach than seen in the OECD secretariat paper;

(d) The Committee should come up with its own solution, if necessary, as a primary duty, and should do so in time to assist developing countries, both in the context of the Inclusive Framework and more generally;

(e) The focus of the Committee should be on the effects on low-income countries and on a workable solution that is suitable for them;

(f) There remained a need for the Committee to take into account the impact of pillar two; one observer noted that only the combination of pillars one and two would provide a comprehensive solution.

101. It was agreed that the Subcommittee would initially analyse and provide comments on the OECD secretariat proposal and other proposals made, with particular attention to implications for developing countries, especially the least developed countries and other countries in special situations, while working on alternatives that might better suit all parties.

J. Tax treatment of official development assistance projects

102. The Coordinator of the relevant Subcommittee, Marlene Nembhard-Parker, provided a brief history of the draft guidelines on the tax treatment of ODA projects and of the work of the Subcommittee. She then reported on coordination with the OECD Development Assistance Committee, where many of the largest providers of ODA discuss issues surrounding aid, development and poverty reduction in developing countries. Those coordination efforts included the participation of the Subcommittee Coordinator and the secretariat of the Committee of Experts in a meeting of the Development Assistance Committee, held in Paris on 5 and 6 September 2019.

103. While it was clear that members of the Development Assistance Committee had different views on the appropriateness of tax exemptions for the projects that they funded, the meeting participants expressed a willingness to carry on work on the issue of transparency for the tax treatment of ODA projects and on technical issues related to tax exemptions for such projects.

104. The Coordinator stated that the Development Assistance Committee subsequently decided to hold a joint technical meeting with the Subcommittee to discuss those issues; that meeting would ideally be held back-to-back with the Subcommittee's next meeting. She also clarified that the work of the Development Assistance Committee would not negatively affect but would complement the work of the Subcommittee, which included members of the Platform for Collaboration on Tax and the African Tax Administration Forum. Its work was likely to be most useful in articulating a framework for greater transparency of tax exemptions for ODA, as recommended in draft guidelines 4 and 5.

105. Mr. Sasseville referred to the progress report presented by the Subcommittee (E/C.18/2019/CRP.19), which included the same version of the guidelines that had been presented to the Committee of Experts at its eighteenth session, together with an annex containing all written comments subsequently received.

106. During the subsequent discussions, one Committee member stressed the non-binding nature of the guidelines and suggested that the wording (including the

use of the word “guidelines”) be reviewed to make that clearer. That member also asked that the relationship between the guidelines and tax treaties be better explained.

107. Another member expressed concerns about the second exception in guideline 1, according to which donors should not request tax exemptions “in exceptional cases where serious concerns with the payment of tax to that country result from a review of the governance structure, tax system or tax administration of that country”. That member suggested that the exception be deleted from there and, instead, presented in the section dealing with possible considerations.

108. In response to a member’s question about the application of the guidelines to exemptions requested by international organizations, the secretariat of the Committee of Experts indicated that the guidelines covered situations where ODA was provided through an international governmental organization, as indicated in guideline 1. It was also clarified that the remuneration of employees of international organizations was not treated in the same way as the remuneration of government officials, because the international standard reflected in article 19 of the United Nations Model Convention did not extend to the remuneration of employees of international organizations, as the tax treatment of such remuneration was typically covered by treaties or related agreements.

109. It was also suggested that the guidelines should discourage the use of domestic tax provisions that allowed for exemptions on a case-by-case basis. It was observed, however, that such domestic provisions were sometimes used by developing countries to give force of law to exemptions granted in informal agreements concluded with donor agencies.

110. Another member suggested the following technical changes to the guidelines:

(a) The last sentence of guideline 3 should be modified to refer also to the employees of donor countries, their aid agencies and international governmental organizations, in order to avoid the suggestion that the guidelines would not apply to such employees;

(b) Guidelines 8 and 9 should be modified to stipulate that reporting obligations should be reasonable and that tax refunds should be provided promptly;

(c) The last sentence of paragraph 39 should be modified to avoid suggesting that donors had the obligation to prevent other parties, such as subcontractors, from assuming that they were entitled to tax exemptions and to ensure that those other parties did not try to obtain such exemptions;

(d) Footnote 14 to paragraph 59 should be deleted, since only direct taxes and capital taxes were covered by article 2 of the United Nations Model Convention.

111. One observer suggested that other stakeholders, in addition to Development Assistance Committee donors, including civil society and other donors, should be approached by the Subcommittee for comments. Another observer expressed the view that the Committee of Experts should clearly recommend that tax exemptions not be requested under any circumstances; the secretariat responded that such a categorical recommendation would probably be disregarded by some donors.

112. The Coordinator and the secretariat concluded the discussion by indicating that, at its next meeting, the Subcommittee would address the written comments included in the annex to the progress report, as well as the various suggestions made during the discussion.

K. Relationship of tax treaties with trade and investment treaties

113. Michael Lennard of the secretariat of the Committee provided a progress report on the relationship of tax treaties with trade and investment treaties. He recalled that, at the eighteenth session, the Committee had endorsed the proposal for follow-up work at the secretariat level, to be carried out in consultation with interested Committee members, which would comprise two streams: (a) the preparation of a more detailed paper on the relevant issues and possible responses, including specific drafting options, by the twentieth session; and (b) the 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. He noted that the secretariat was taking into consideration the possibility of merging work on the two streams into a single document with attachments.

114. Mr. Lennard recalled 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 and other entities and individuals with relevant expertise, including the United Nations Conference on Trade and Development (UNCTAD) and possibly the United Nations Commission on International Trade Law and other stakeholders. Members would be polled for their interest to participate in the group, which would be activated by the end of the year.

115. Mr. Lennard noted the important work done by the UNCTAD Division on Investment and Enterprise on investment treaties and the importance of partnering with the Division in that regard. Richard Bolwijn of that Division presented, as input to the work of the Committee, the UNCTAD Investment Policy Framework for Sustainable Development, which served as a tool for tax policymakers. He noted that the approach of the Policy Framework was advisory and not prescriptive.

116. Jeffrey Owens, of the Vienna University of Business and Economics, outlined the relevant research done at that institution. He stressed the need to look at the issues in context, including the investment facilitation role of both investment and tax agreements. A whole-of-government approach was needed to adequately address them.

117. In their comments, members underscored the importance of the overlap of investment agreements with tax treaties and tax measures. One member noted the importance of looking at country practice in addressing the overlap issue. Mr. Lennard shared that view and noted that, in the paper on the interaction of such agreements presented at the eighteenth session (E/C.18/2019/CRP.14),³ many such instances had been identified. The expertise of UNCTAD would help to further signal effective State practice.

L. Other matters for consideration

118. The secretariat noted, and the Committee endorsed, the importance of Committee guidance, such as models, manuals and handbooks, being published as quickly as possible in the official working languages of the United Nations.

119. The secretariat confirmed the following dates for the next sessions of the Committee, as previously approved:

- 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

³ The documents of the eighteenth session of the Committee are available at www.un.org/esa/ffd/events/event/tax-eighteenth-session.html.

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 twentieth session of the Committee

120. 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 twentieth session of the Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council:

- (a) Decides that the twentieth session of the Committee of Experts on International Cooperation in Tax Matters will be held in New York from 27 to 30 April 2020;
- (b) Approves the following provisional agenda for the twentieth 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 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 twenty-first session of the Committee.
5. Closing of the twentieth session.

