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**Committee of Experts on International
Cooperation in Tax Matters
Tenth Session**

Geneva, 27-31 October 2014

Agenda Item 3 (b) (i) of the provisional agenda*

**Issues for the next update of the United Nations Practical
Manual on Transfer Pricing for Developing Countries**

**Subcommittee on Article 9 (Associated Enterprises):
Transfer Pricing**

Report of the Coordinator

History and Mandate of the Subcommittee on Transfer Pricing

The Committee of Experts on International Cooperation in Tax Matters (“the Committee”) recognized the difficulties that addressing transfer pricing could create for many developing countries and began its work on the United Nations Practical Manual on Transfer Pricing for Developing Countries (“the Manual”) in 2009, when it established its first Subcommittee on Transfer Pricing. The Manual was adopted by the Committee during its 2012 annual session and was issued in print form in 2013. As the former membership of the Committee was dissolved at the end of June 2014, so did the Subcommittees formed by that Membership.

The Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing was thus created at the first annual session of the current membership of the Committee in 2013 with the goal to take the Committee’s work in this area forward.

The mandate of the Subcommittee is as follows:

A. Revision of the Commentary on Article 9 of the UN Model Convention

The Subcommittee (through its Core Group of Committee Members) shall provide draft revised commentary on Article 9 and especially with regard to paragraph 1 of that article shall, in particular, take into account the common arm’s length principle embodied therein and in the corresponding Article of the OECD Model Convention and the need to provide, as far as possible, a common international framework for preventing and resolving disputes in the area of transfer pricing. Also the Subcommittee in this regard shall give due

* E/C.18/2014/1

consideration to the aims and objectives expressed in the OECD/G20 Action Plan on Base Erosion and Profit Shifting as concerns transfer pricing and in its work, keeping in mind particularly the special situation of less developed economies.

The Subcommittee shall present its proposed draft Commentary for discussion and decision at the tenth annual session of the Committee in 2014.

B. Update and enhancement of the United Nations Practical Manual on Transfer Pricing for Developing Countries

The Subcommittee as a Whole is mandated to update the United Nations Practical Manual on Transfer Pricing for Developing Countries, based on the following principles:

- That it reflects the operation of Article 9 of the United Nations Model Convention, and the Arm's Length Principle embodied in it, and is consistent with relevant Commentaries of the U.N. Model;
- That it reflects the realities for developing countries, at their relevant stages of capacity development;
- That special attention should be paid to the experience of developing countries; and
- That it draws upon the work being done in other fora.

In carrying out its mandate, the Subcommittee shall in particular consider comments and proposals for amendments to the Manual and provide draft additional chapters on intra-group services and management fees and intangibles, as well as a draft annex on available technical assistance and capacity building resources such as may assist developing countries. The Subcommittee shall give due consideration to the outcome of the OECD/G20 Action Plan on Base Erosion and Profit Shifting as concerns transfer pricing and the Manual shall reflect the special situation of less developed economies.

The Subcommittee shall report on its progress at the annual sessions of the Committee and provide its final updated draft Manual for discussion and adoption at the twelfth annual session of the Committee in 2016.

The Subcommittee is comprised of Members from tax administrations with wide and varied experience in dealing with transfer pricing as well as Members from academia, international organizations and the private sector, including from multinational enterprises and advisers.

Subcommittee Membership

The members of the Subcommittee and their affiliations at the time of writing (although membership is in a personal capacity) are:

Members of the Committee who are also Subcommittee Members

- Mr. Stig Sollund, Coordinator
- Ms. Noor Azian Abdul Hamid
- Mr. Johan Cornelius de la Rey

- Mr. Toshiyuki Kemmochi
- Mr. Tizhong Liao¹
- Mr. Henry John Louie
- Mr. Enrico Martino
- Ms. Pragya S. Saksena
- Mr. Christoph Schelling
- Ms. Ingela Willfors

Other Members

- Mr. Marcos Valadao (Secretariat of the Federal Revenue of Brazil)
- Mr. Ganapati Bhat (Indian Revenue Service)
- Ms. Caroline Silberztein (Baker & McKenzie)
- Mr. Giammarco Cottani (Italian Revenue Agency)
- Mr. Joe Andrus (OECD)
- Ms. Jolanda Schenk (Shell)
- Mr. Michael Kobetsky (University of Melbourne)
- Mr. Michael McDonald (Department of Treasury, USA)
- Ms. Monique van Herksen (Ernst & Young)
- Ms. Nishana Gosai (South African Revenue Service)
- Mr. TP Ostwal (TP Ostwal & Associates)
- Mr. Toshio Miyatake (Adachi, Hendersen, Miyatake & Fujita)
- Ms. Ying Zhang (State Administration of Taxation, China)
- Mr. George Obell (Kenya Revenue Authority)
- Mr. Julius Bamidele (Federal Inland Revenue Service, Nigeria)
- Mr. Hafiz Choudhury (addressing editorial matters)

Subcommittee Meetings and Special Meeting of ECOSOC

First Meeting: New York

The first meeting of the Subcommittee took place at the United Nations Headquarters in New York in April 2014. In a one-day meeting, the core group, i.e. the members of the Subcommittee that are also members of the Committee of Experts, met to develop proposed changes to the Commentary of Article 9. This aspect of the Subcommittee work is addressed in the corresponding Note by the Secretariat on “Update of the Commentary on article 9 of the United Nations Model Double Taxation Convention between Developed and Developing Countries”.²

During the meeting of the whole Subcommittee initial discussions focused on Intra-Group Services, Cost Contribution Arrangements and Business Restructuring. The Subcommittee also developed an overview of tasks including designated lead drafters for the update of the existing and the development of new chapters of the Manual.

Second Meeting: Rome

¹ Mr. Tizhong Liao has since resigned from the Committee of Experts and is no longer participating in the Subcommittee.

² The note E/C.18/2014/4 can be found at:
http://www.un.org/ga/search/view_doc.asp?symbol=E/C.18/2014/4&Lang=E.

The outcome of the first meeting of the Subcommittee set the stage for the second meeting of the Subcommittee that was hosted by the Italian Revenue Agency in September 2014 in Rome. In Rome, discussions continued on Intra-Group Services, Cost Contribution Arrangements and Business Restructuring. An outline of possible work on intangible issues in intra-group transactions was also considered taking into account current developments in this area.

Subcommittee Workplan

For next year, the Subcommittee proposes to work further on the new chapters and sub-chapters on specific transfer pricing aspects as outlined above as well as to further update the already existing chapters of the Manual. A meeting is tentatively scheduled to take place in April 2015 at the United Nations Headquarter in New York.

As outlined in the Subcommittee's mandate, the intention of the Subcommittee is to present an updated version of the Manual at the twelfth annual session of the Committee in 2016 for approval. The Subcommittee will continue to update the Committee at the annual sessions and make draft material available in due course.

The Subcommittee would like to thank the government of Italy for its generosity in hosting the second meeting of the Subcommittee. Other governments are encouraged to consider hosting future meetings. A lack of funding continues to be an issue and the Subcommittee will proceed to seek support for the work that it is undertaking including to enable Subcommittee members from developing countries and the Secretariat to participate at upcoming meetings.
