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Committee of Experts on International Cooperation in Tax Matters

Report on the sixth session (18-22 October 2010)

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Note

Symbols of United Nations documents are composed of capital letters combined with figures.

Summary

The present report contains the conclusions and recommendations of the sixth session of the Committee of Experts on International Cooperation in Tax Matters, held at the United Nations Office at Geneva from 18 to 22 October 2010. The Committee, which was established by the Economic and Social Council by its resolution 2004/69, consists of 25 experts appointed in their personal capacity for a four-year period.

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2010/257, the sixth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 18 to 22 October 2010.

2. The sixth session of the Committee of Experts was attended by 23 members of the Committee and 110 observers. The following members of the Committee of Experts attended the session: Bernell L. Arrindell (Barbados),[1] Claudine Devillet (Belgium), Marcos Aurelio Pereira Valadao (Brazil), Iskra Georgieva Slavcheva (Bulgaria), Liselott Kana (Chile), Wolfgang Lasars (Germany), Kwame Adjei-Djan (Ghana), Anita Kapur (India), Enrico Martino (Italy), Keiji Aoyama (Japan), Mansor Hassan (Malaysia), Armando Lara Yaffar (Mexico), Noureddine Bensouda (Morocco), Robin Moncrieff Oliver (New Zealand), Ifueko Omoigui-Okauru (Nigeria), Stig Sollund (Norway), Farida Amjad (Pakistan), Sae Joon Ahn (Republic of Korea), El Hadji Ibrahima Diop (Senegal), Ronald Van der Merwe (South Africa), Julia Martinez Rico (Spain), Jürg Giraudi (Switzerland) and Henry John Louie (United States of America).

3. The session was also attended by observers for Argentina, Australia, Austria, the Bahamas, Belgium, Brazil, China, Croatia, the Czech Republic, the Democratic Republic of the Congo, Denmark, India, Italy, Japan, Kuwait, Lesotho, Liechtenstein, Luxembourg, Monaco, Morocco, the Netherlands, Nigeria, Norway, the Republic of Korea, Saudi Arabia, Senegal, Singapore, Spain, the Sudan, Switzerland, Thailand, Turkey, the United Kingdom of Great Britain and Northern Ireland and Viet Nam.

4. Observers from the following intergovernmental organizations were also present: European Commission, International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), World Bank Group and the Inter-American Center of Tax Administrations.

5. The following other entities were also represented: Action Aid UK, Anglia Ruskin University, Canadian Tax Foundation, Confédération Fiscale Européenne, European Law Students' Association, Fairleigh Dickinson University, Foundation for International Taxation, India, International Bureau of Fiscal Documentation, International Chamber of Commerce, KIMEP — Kazakhstan Institute of Management, New Rules for Global Finance Coalition, St. Thomas University, Tax Justice Network, United States Council for International Business, Universidad Complutense de Madrid, University of Indonesia, University of Lodz, Vienna University of Economics and Business, World Association of Former United Nations Internes and Fellows. Others participated in their personal capacity or on behalf of their companies or practices.

6. The agenda and documentation for the sixth session was as follows:

1. Opening of the session by the Chair of the Committee.

2. Adoption of the agenda (E/C.18/2010/1) and organization of work (E/C.18/2010/2).

[1] The countries of the members are noted merely for information, as members of the Committee act in their personal capacity.

3. Discussion of substantive issues related to international cooperation in tax matters:

   (a) United Nations Model Tax Convention update (E/C.18/2010/CRP.1);

   (b) Dispute resolution (E/C.18/2010/CRP.2 and Add.1);

   (c) Issues related to attribution of profits under article 7 of the United Nations Model Convention;

   (d) Transfer pricing: practical manual for developing countries (E/C.18/2010/CRP.4);

   (e) Article 13: capital gains (E/C.18/2010/3);

   (f) Taxation of development projects;

   (g) Exchange of information;

   (h) Tax treatment of services (E/C.18/2010/CRP.7 and Add.1);

   (i) Article 14 of the United Nations Model Convention (E/C.18/2010/4 and E/C.18/2010/CRP.8);

   (j) Definition of permanent establishment: proposed revised article 5 commentary (E/C.18/2010/5 and E/C.18/2010/6);

   (k) Concept of beneficial ownership (E/C.18/2010/CRP.9);

   (l) Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2010/CRP.10);

   (m) Capacity-building (E/C.18/2010/CRP.11 and Add.1);

   (n) Tax cooperation and its relevance to major environmental issues, particularly climate change (E/C.18/2010/CRP.12);

   (o) Tax competition in corporate tax: use of tax incentives in attracting foreign direct investment (E/C.18/2010/CRP.13).

4. Dates and agenda for the seventh session of the Committee.

5. Adoption of the report of the Committee on its sixth session.

Chapter II
Organization of the session

A. Opening of the session and adoption of the agenda

7. On 18 October 2010, the Chair of the Committee, Armando Lara Yaffar, opened the sixth session of the Committee. He noted that the most urgent task before the Committee was the revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries,[2] which the Committee was planning to complete by 2011, and he expressed hope for fruitful discussions in the Committee and for reaching conclusions satisfactory to all its members.

8. Alexander Trepelkov, Director, Financing for Development Office, Department of Economic and Social Affairs of the Secretariat, then delivered introductory remarks. He pointed out that the current session of the Committee was taking place at a critical time, with an unprecedented demand from both developing and developed countries for strengthening international cooperation in tax matters.

9. Mr. Trepelkov then provided an update on the relevant developments within the United Nations. He mentioned the outcome of the High-level Plenary Meeting of the United Nations General Assembly on the Millennium Development Goals, held in New York in September, in which the relationship between international cooperation in tax matters and development featured prominently. He also mentioned that the Economic and Social Council, in its resolution E/2010/33, had requested the Secretary-General, taking into account the views of Member States and taking into consideration the work done on tax matters in other international forums, to submit to the Council by March 2011 a report examining the strengthening of institutional arrangements to promote international cooperation in tax matters, including the United Nations Committee of Experts on International Cooperation in Tax Matters. He noted that the Council had further requested the President of the Council to convene a discussion by spring 2011 on international tax cooperation. A central issue for consideration will be the proposal to upgrade the present Committee of Experts to the level of an intergovernmental body.

10. The provisional agenda, contained in document E/C.18/2010/1, was then adopted.

[2] United Nations publication, Sales No. E.01.XV.2.

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

A. United Nations Model Tax Convention update

11. The update to the United Nations Model Tax Convention was introduced by Robin Oliver, the Coordinator of the relevant Subcommittee. He presented document E/C.18/2010/CRP.1, giving an update on the status of the work, including some issues that had arisen. Mr. Oliver noted that not as much progress had been made as was hoped. Draft electronic versions had been prepared with track-marked changes from the 2001 update; this included all articles except articles 1 to 4 (still being worked on), 13 to 17 and 25 (subject to decisions at the sixth session) and 23 to 24 and 27 to 29 (substantially completed in draft). The approach adopted was to follow the 2001 United Nations Model Convention but amending it in line with changes agreed to by the Committee since 2001 and also updating quotes from the OECD commentary to the most recent appropriate version of the OECD Model Tax Convention on Income and on Capital.

12. The Subcommittee was meanwhile checking and incorporating changes that had been agreed by the Committee since the 2001 version of the United Nations Model Convention, and would incorporate changes made in 2010 and 2011 also. The Subcommittee, with the assistance of other Committee members, was also analysing whether there were other changes that could be easily agreed by the Committee and which would improve the United Nations Model Convention, including adopting some changes to the OECD Model Convention that were also appropriate to the United Nations Model. Proposals for changes of that sort would be distributed to the members for consideration and feedback early in 2011.

Quotation of the Organization for Economic Cooperation and Development Model Convention

13. Mr. Oliver noted that a key question was how to appropriately include quotations of the OECD Model Convention in the commentaries to the United Nations Model Convention. Four alternatives were presented:

(a) Not to refer to the commentaries to the OECD Model Convention, but rather to draft a new and distinct commentary for each article. It was noted that that would require redrafting on a scale which was beyond the capacity of the Committee and the Secretariat;

(b) Refer generally to the OECD Model Convention and commentaries, without reference to its views on particular issues. This would give minimal interpretation guidance to the readers, and raise the question of what to do when changes were made in the OECD commentaries;

(c) Refer explicitly to the relevant OECD commentary but not quote the paragraphs in the text. This would have the virtue of shortening the length of the commentary, but it would be difficult since the United Nations Model Convention did not always agree on all details with the OECD Model Convention (such as in art. 12);

(d) Continue the existing practice of quoting from selected relevant passages of the OECD commentary as appropriate. The commentary on article 7, could, for example, refer to relevant parts of the OECD commentary, without adopting parts of it that were not agreed as relevant to article 7 of the United Nations Model Convention.

14. Mr. Oliver expressed a preference for option (d) and there was general support for that proposal as well as other recommendations in document E/C.18/2010/CRP.1; however, it was stressed that any quotation from the OECD Model Convention should clearly indicate endorsement and/or disagreement with the position. Members should, as far as possible, contribute in that respect before the 2011 session in order to have a final draft ready for consideration at that meeting.

15. It was agreed that it needed to be clear what version of the OECD commentaries was quoted. In the draft to date this had been the 2008 update unless another version was explicitly referred to. There was support for updating the United Nations Model Convention to the OECD's 2010 Model Convention, and it was agreed that this would be considered in the context of particular commentaries where that would be desirable and could feasibly be included. The included OECD quotations should pass the test of being relevant and useful to users of the United Nations Model Convention, including its commentaries. This was a matter of opinion, but in the draft a conservative approach had been adopted and most of the existing quotations had been retained.

Use of the terms "developing countries" and "developed countries"

16. Mr. Oliver noted that the United Nations commentaries referred on many occasions to the terms "developing" and "developed" countries, following technical United Nations categorizations. It was agreed that this approach would be maintained where the reference was useful to reflect a discussion or conclusions reached by the Committee (or its predecessor the Ad Hoc Group of Experts). Therefore, the drafts being developed would delete some references to "developing" and "developed" countries where it was not considered necessary to add any relevant context to the commentary.

17. The Secretariat noted that some of the debate and decisions taken in the past by the Committee were relevant to the discussion, in particular in paragraph 21 of the 2008 report (E/2008/45) where it was noted that: "… paragraph 9 of the introduction to the United Nations Model Convention should be revised to be less ambivalent about the significance of quoting the OECD Model Convention in future. This was generally accepted. There were differing views as to the understanding of the text of the United Nations Model Convention where it referred to the interpretative value of the previous citations of the OECD commentaries made by the former Ad Hoc Group of Experts. There was no consensus on this latter issue."

18. The Secretariat also referred to paragraph 70 of the report for the 2007 annual session, where other decisions had been taken with respect to the drafting of the 2011 Model update.

19. Asked about a possible timetable for the work, Mr. Oliver noted that the aim of the Subcommittee was to finalize articles 5 to 12, as well as articles 18 to 22, over

the next months and articles 14 to 17 were subject to Committee decision-making, and January 2011 would be realistic. One member commented on the importance of reflecting points of disagreement, as well as agreement in general in the work, and Mr. Oliver noted that all members of the Committee (hopefully before the next meeting in 2011) were welcome to indicate areas of their disagreement, which could then be taken into account.

20. **The Committee invited the Subcommittee to continue its important work.**

B. Dispute resolution

21. Claudine Devillet, the coordinator of the Subcommittee on Dispute Resolution, presented the report of the Subcommittee, contained in document E/C.18/2010/CRP.2. She noted that the mandate given to the Subcommittee during the 2009 annual session was to consider ways of providing for arbitration in the United Nations Model Convention, either in article 25 (Mutual agreement procedure) itself or in the commentary to that article. The Subcommittee was to consider both mandatory and voluntary arbitration as well as streamlined arbitration. The Subcommittee met in Paris earlier in 2010 in an attempt to fulfil its mandate.

22. The following three options for addressing the issue in the revised United Nations Model Convention were identified by the Subcommittee in its paper and presented to the Committee for its decision as follows:

Option I: To include an arbitration provision in article 25 of the United Nations Model Convention, together with a footnote indicating that the contracting States, for a variety of reasons, may consider that the inclusion of the provision is not appropriate.

Option II: To include two alternative versions of article 25 in the United Nations Model Convention (as is already done for arts. 8, 18 and 23). Alternative A would not include an arbitration provision, while Alternative B would include an arbitration provision similar to the one proposed under Option I.

Option III: To refrain from including an arbitration provision in article 25 of the United Nations Model Convention but to include in paragraph 36 of the commentary on that article a new optional provision similar to the one proposed under Option I.

23. Ms. Devillet then summarized the Subcommittee's discussion of various pros and cons of arbitration. The value in terms of certainty of ensuring a conclusion to tax disputes, and the positive impact on the investment climate, were noted. Some members were of the view that arbitration was not needed given the small proportion of mutual agreement procedure cases involving non-OECD countries and the very small number of unresolved mutual agreement procedure cases. Others, however, felt that introducing arbitration would be critical in order to provide business certainty to investors. Also, the threat of arbitration would force competent authorities to act reasonably and to explore solutions without actually going into arbitration.

24. Some members had voiced concern about the potential costs of arbitration to developing countries. Others were of the view that arbitration would be rare and that costs could be distributed among various competent authorities unequally, thus in effect favouring developing countries.

25. One way of reducing the cost of arbitration would be to have so-called baseball style arbitration, where the arbitrator must select between the positions put forward by each of the two parties and cannot choose a compromise or alternative option. One suggestion was also made that the United Nations could eventually play a role in helping developing countries to bear the costs of arbitration.

26. Ms. Devillet noted that views differed on the effect of lack of expertise in the competent authorities of developing countries on the results of arbitration. Some members were of the view that an independent and impartial review of a case by an independent expert would compensate for any lack of expertise in some developing countries, so that they would actually benefit from arbitration.

27. Others thought that less experienced countries would be in a weaker position in arbitral proceedings. Views also differed regarding the availability of independent experts from developing countries.

28. The issue was then opened for broader discussion among members and observers. Option III received some support. Option I received greater support, however, the Chair noted a general lack of support for that option among members coming from developing countries. The general trend finally indicated a preference for Option II. The Chair put the proposal to the Committee to seek a consensus decision, and the Option II approach was agreed.

29. **The Committee agreed that the Option II approach should be followed in the new United Nations Model Convention, with two alternative options for article 25; article 25A would not have an arbitration provision, while article 25B would have a provision on mandatory arbitration.**

30. **There was further discussion about how this would impact on the commentary on the two versions of article 25. It was agreed that it was important that there be an early discussion in the commentary on some of the considerations why a country negotiating a double tax agreement might prefer one alternative over the other in its particular circumstances and experiences, including the possible consequences of each of the choices.**

31. During the discussion, there were varied views over issues such as: whether competent authorities, as proposed by the Subcommittee, or taxpayers should be able to initiate the process of mandatory arbitration; whether, departing from the long-standing practice, taxpayers should in the future be allowed to present their case to either of the competent authorities; whether sovereignty was a barrier to arbitration; whether domestic courts could adequately solve taxation not in accordance with a tax convention; whether a taxpayer should have the right to reject an arbitration decision; the difficulty in finding sufficient independent and qualified arbitrators; the costs of an arbitration process compared with court proceedings; whether capping the number of days and fees could be used as a cost-control mechanism and whether the three-year period in Option II before arbitration could be resorted to was appropriate or too long.

32. **There were conclusions on some of these other issues by the Committee. The Committee agreed that so-called baseball arbitration would be the default option, because of its potential to be better suited in terms of cost and complexity for many developing countries.**

33. **On the issue of whether a mutual agreement procedure case could be presented to *either* State's competent authority, the Committee agreed to remain consistent with the long-standing practice and not to change article 25. It was agreed that, as with the OECD commentary, the United Nations commentary on article 25 should include a paragraph with a draft provision for countries wishing to allow submission to the competent authority of *either* State.**

34. **The Committee agreed on the three-year period before arbitration could be invoked. It also agreed that the arbitration provision would be triggered by a competent authority and not by the person presenting the mutual agreement procedure case.**

35. **It was agreed that the Subcommittee would prepare a new draft by February 2011, taking into account those outcomes and some changes that had been pointed out as necessary in the drafting, and then ask for written comments.**

36. **With respect to the draft mutual agreement procedure guide, provided as document E/C.18/2010/CRP.2/Add.1, the coordinator asked the members and observers to submit written comments, and highlighted the importance of conferring with their respective competent authorities. Feedback should be provided by December 2010. It was noted that the mutual agreement procedure guide would not be included in the 2011 update.**

C. Issues related to attribution of profits under article 7 of the United Nations Model Convention

37. Robin Oliver introduced the subject, as coordinator of the Working Group addressing the issue. He referred to the paper he produced for the 2009 annual session on the issue (E/C.18/2009/2). He reminded the Committee that OECD had done a significant amount of work in this area. It had incorporated a revised commentary on article 7 in its 2008 update. A new article 7 had now been incorporated in the 2010 OECD update, based on the OECD 2008 final report on the attribution of profits to permanent establishments.[3] It was noted that a number of OECD countries had "reservations" on the OECD approach and many non-OECD countries had disagreed with the approach in their "positions" included in the 2010 version of the OECD Model Convention.

38. Mr. Oliver expressed the view that the new OECD article 7 and its commentary had introduced significant changes conflicting with the approach taken in article 7 of the United Nations Model Convention.

39. The new OECD article 7 requires permanent establishments to be treated as fictional or notional separate legal entities — with assets, capital and liabilities allocated between branches and head offices largely on the basis of "significant people functions". In particular, deductions would be provided to permanent establishments for notional payments of interests, royalties and rents attributable to head offices. The new OECD provision would not, however, allow for the levying of

[3] Centre for Tax Policy and Administration, "Report on the attribution of profits to permanent establishments", 17 July 2008.

withholding tax on such notional payments. This would only be possible if the treaty specifically provided for such a withholding tax.

40. The new OECD article 7 was therefore seen as potentially changing the balance between source and resident taxation contrary to the interests of many developing countries.

41. At the 2009 annual session, the Committee had agreed that whatever approach was right for the OECD Model Convention, the Committee should not adopt the approach to article 7 of that Model, as outlined in the OECD 2008 report, as being relevant to the United Nations Model Convention. This was because it was in direct conflict with paragraph 3 of article 7 of the United Nations Model Convention, which generally disallowed deductions for amounts "paid" (otherwise than towards reimbursement of actual expenses) by a permanent establishment to its head office. That rule was seen as continuing to be appropriate in the context of the United Nations Model Convention, whatever changes were made to the OECD Model Convention and commentaries.

42. In 2009 it was agreed that a minimalistic approach to drafting changes to the article 7 commentary would be taken, including noting that the Committee had not adopted the approach of the OECD 2008 report and also including a short statement as to why the United Nations Model Convention varied from the new OECD approach, as part of the 2011 Model update.

43. Mr. Oliver noted that the first part of the approach suggested was to refer to the 2005 version of the OECD Model Convention in relation to article 7, as the last version that did not refer to the OECD 2008 report. The second part of the approach he proposed was to indicate early in the commentary on article 7 that: "It should be noted that all subsequent references to the OECD Model Convention and its commentary relate to the 2005 Model update, because the United Nations Committee of Experts has not adopted the OECD approach to article 7 as reflected in the 2010 OECD update."

44. The third part of the proposed approach at the end of paragraph 3 would indicate that "the approach adopted is consistent with the interpretation adopted in the 2005 OECD update but varies from the approach taken by OECD in its 2008 report on the attribution of profits to permanent establishments, which envisaged taking into account the dealings between different parts of an enterprise — a permanent establishment and its head office. The United Nations Model explicitly continues to disregard such dealings". If it was desired, a more explicit statement of why the Committee did not adopt the approach taken in the 2010 OECD update could be made, on the basis that the new approach was "complex and has the potential to undermine the appropriate balance between source and residence based taxation".

45. It was noted that the 2008 OECD Model Convention introduced clarifications that profits could be allocated to a permanent establishment even though the company as a whole was in loss, and that paragraph 3 did not make non-deductible expenses at domestic law deductible, and that those might be useful to specifically adopt, even if the 2005 OECD Model Convention was the reference version in other respects. The 2008 changes from 2005 might need to be analysed one by one. The note at the end of the article, which relates to profits from mere purchase, might also be considered for deletion, as in the OECD Model Convention.

46. **After some discussion it was decided that the references should be, where possible, to the 2008 version of the OECD Model Convention, but with adaptations as required, including removing references to the 2008 OECD report on the attribution of profits to permanent establishments. It was also decided that the most appropriate way to refer to the Committee's position was to refer to the decision taken at the 2009 annual session. The rewritten proposal would be circulated to members for comment at a later stage.**

D. Transfer pricing: practical manual for developing countries

47. Stig Sollund, the coordinator of the Subcommittee on Transfer Pricing — Practical Issues, reported to the Committee on the progress of the work of the Subcommittee so far. He noted that according to its mandate the aim was to present a complete draft manual for adoption to the 2011 annual session of the Committee, while an intermediate report showing substantial progress should be provided to the Committee in 2010. The report given was basically as set out in the written report contained in document E/C.18/2010/CRP.4.

48. In addition, Mr. Sollund informed the Committee of the "brainstorming" meeting of a group of experts convened by the Secretariat in New York in January 2010 at which the five members of the Committee at that time forming the Subcommittee (Mansor Hassan, Marcos Valadao, Amr El Monayer, Keiji Aoyama and Stig Sollund) attended and participated in the discussions relevant to the preparations of the Subcommittee's work on the practical transfer pricing manual. He noted that at the meeting, discussions had also touched upon global formulary apportionment as an alternative to transfer pricing based on the arm's length principle, but that as clearly referenced in the mandate of the Subcommittee the manual would be based on the arm's length principle embodied in article 9 of the United Nations Model Convention and consistent with the relevant commentaries of the Model, which also would require consistency with the OECD Transfer Pricing Guidelines to which the United Nations commentaries make a reference. Considerations in the way of adopting a global formulary apportionment approach are therefore not within the confines of the work of the Subcommittee. The discussions of the group of experts, however, included an exchange of views at some length regarding the use of presumptive arm's length margins, safe harbours and formulas when applying arm's length pricing profit methods. Such considerations were also part of the Subcommittee's discussions as this was thought to be potentially practical for developing countries within the frameworks of applying the arm's length principle.

49. Mr. Sollund furthermore reported on the enlargement of the Subcommittee to its present composition, mentioning the persons listed in document E/C.18/2010/CRP.4 in connection with the Malaysia meeting of the Subcommittee, with the addition of Sanjay Mishra from India, and also mentioning his intention to invite Carol Dunahoo to join the Subcommittee, with the expectation that she could contribute significantly to its work, including on the next chapters to be drafted, noting in particular the chapter on prevention and resolution of transfer pricing disputes.

50. Draft chapters in the form of working drafts were on the Committee website (http://www.un.org/esa/ffd/tax/sixthsession/index.htm), covering: an introduction to

transfer pricing; business framework: the theory of the firm and the reasons for the existence of multinational enterprises; the general legal environment; and establishing transfer pricing capability in a tax administration, to which written comments had been invited. In addition, a working draft on transfer pricing methods was on the website, with an invitation to give written comments (hard copies of the working drafts were provided to the annual session for information). The intention of the Subcommittee was to review the comments to be received for purposes of refining the draft chapters, and as part of the process of doing so, calling a meeting of the Subcommittee tentatively in early February 2011.

51. Simultaneously, the Subcommittee would start working on additional chapters on comparability (including functional analysis), documentation, audits (including risk assessment) and prevention and resolution of transfer pricing disputes. Taking account of the time needed to conduct and finalize the work, Mr. Sollund asked the Committee to adjust the mandate of the Subcommittee permitting the finalization of the manual to extend to the annual session in 2012, but reporting again on substantial progress at the annual session in 2011. This was accepted by the Committee.

52. Mr. Sollund continued by noting that many persons in the Subcommittee, with good assistance from the Secretariat, were contributing to the development of the draft chapters. With regard to the chapter on the introduction to transfer pricing he mentioned especially T. P. Ostwal, who had accepted the invitation to give a short presentation of the main topics of the working draft. Thereupon Keiji Aoyama similarly presented the topics of the working draft on the general legal environment. Finally Monique van Herksen, the initial drafter of the working draft on transfer pricing methods, gave an outline of how the various methods were presented and discussed in the draft chapter on methods. In doing so, she also explained the potential benefit to developing country tax administrations in making use of presumptive margins and safe harbours in relevant circumstances. Additionally, she mentioned as an idea to be considered that the United Nations, in an appropriate form, might issue temporary industry margins based on research and statistics to be used by taxpayers and tax administrations as arm's length presumptive benchmarks.

53. One member commented that the fixed margins applied by Brazil in its transfer pricing legislation were also examples of variations of arm's length principle standards, and that, in the right circumstances, this example could be useful also to developing countries.

54. In closing, Mr. Sollund thanked the members of the Subcommittee and in particular his co-presenters, and emphasized that developing the practical manual was a substantial project that could be successfully achieved only by joint efforts. Especially, substantial inputs and examples were needed from developing countries for the end result to be useful to the less experienced countries. He therefore strongly invited more participation from developing countries in developing the manual.

55. **The Committee invited the Subcommittee to continue its work, with a targeted completion date of 2012.**

E. Article 13: capital gains

56. In the absence of Tizhong Liao, coordinator of the Subcommittee on this issue, the proposed new paragraphs 9 to 16 of the commentary relating to paragraph 5 of article 13 (E/C.18/2010/3) were introduced by Ronald Van der Merwe (sections I-IV) of the paper and Anita Kapur (section V, dealing with certain compliance issues). It was noted that paragraph 5 had been redrafted and agreed by the Committee at its fourth session, in 2008, following the work of the Subcommittee on the Improper Use of Treaties, and the Subcommittee on Capital Gains was subsequently mandated in 2009 to revise the commentary relating to that paragraph.

57. **The discussions that followed indicated general acceptance of the proposed new draft with two exceptions as follows:**

(a) ***Paragraph 11*. Members of the Committee and certain observers indicated a preference to include a reference to paragraph 2 of article 3, in particular reference to the context which should be borne in mind when applying domestic law as envisaged in paragraph 11. A view was also expressed that paragraph 11 did not really add to the commentary and should be deleted;**

(b) ***Paragraph 16*. A request was made that the paragraph should be extended to indicate that agreement not to tax gains derived in the course of corporate reorganizations could be included in the treaty text during bilateral negotiations.**

58. **Members wishing to propose amendments to those two paragraphs were requested to submit their comments to the Subcommittee for further consideration.**

59. **Finally, it was suggested and agreed that the examples given in paragraph 12 of the paper (E/C.18/2010/3) should be deleted from the paper and consideration be given to inclusion in the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries[4] (see section L below).**

60. **Some of the difficulties in applying paragraph 4 for administrators, taxpayers and advisers were commented on during the discussion. It was agreed that the Subcommittee should consider these issues further and advise on whether the paragraph should be rewritten.**

F. Taxation of development projects

61. Jacques Sasseville referenced the 2006 paper (E/C.18/2006/5) and the 2007 paper (E/C.18/2007/CRP.12) on this topic. The first of these papers summarized current practice in the taxation of foreign project assistance. It argued for a reconsideration of any presumption that donors should seek tax exemption in the recipient countries for the projects that they finance. It proposed developing guidelines towards a more coordinated approach that countries would be free to adopt. The 2007 paper included a set of draft guidelines that could be used to consult with all stakeholders, including donor agencies. No paper was prepared for discussion in 2010, as the presentation represented an update.

[4] ST/ESA/PAD/SER.E/37.

62. Mr. Sasseville explained that this issue had been placed on its agenda by the African Tax Administration Forum.

63. **The Committee has previously noted that this was an important issue, as the effect of large projects falling outside the tax system was especially significant for developing countries. The Committee would await further updates from those involved in this work.**

G. Exchange of information

64. There was no paper required for this item. The Secretariat updated the Committee on the proposed United Nations Code of Conduct on Cooperation in Combating International Tax Evasion, which was adopted by the Committee at the fifth annual session (see E/2009/45, annex) and was now before the Economic and Social Council for consideration. In paragraph 4 of its resolution 2010/33, the Council took note with appreciation of the proposed Code of Conduct on Cooperation in Combating International Tax Evasion adopted by the Committee, and encouraged Member States to further discuss the issue within the United Nations, as a practical means of enhancing international tax cooperation.

65. It was noted that much of the Council's time at the substantive session on the item related to the Committee and international tax cooperation had been taken up with other issues dealt with in resolution 2010/33, notably the possible upgrading of the Tax Committee and the requested report of the Secretary-General, and as yet there had not been an opportunity for countries to take up the Code. The Secretariat would continue to draw the attention of representatives of the Council to the Code as an important aspect of the Committee's work to meet its mandate.

66. One observer from a non-governmental organization expressed the view that automatic exchange of information should be recognized as the standard in this area, although the issue was not discussed in any detail and no conclusions were drawn on it.

67. **The Committee noted the importance of the Code of Conduct being taken up at the country level and renewed its invitation to the Economic and Social Council to take action as a matter of priority on the proposed United Nations Code of Conduct on Cooperation in Combating International Tax Evasion, as contained in the Committee's report on its fifth session.**

H. Tax treatment of services

68. Brian Arnold introduced his consultancy papers (E/C.18/2010/CRP.7 and Add.1). His presentation centred on ways in which different articles of the United Nations Model Convention and the OECD Model Convention dealt with the taxation of services and the lack of consistent policy treatments. He noted that the policy reasons for different treatments within the same model and as between the two models were not always clear or consistently applied. This was an examination of the problem which needed to precede examining possible solutions.

69. Mr. Arnold also addressed issues related to payments made by the residents of a country to foreign residents for the provision of services supplied to the former. The erosion of the source country's tax base by payments for such technical services

had led some countries to add specific provisions to their treaties to allow them to tax technical fees on a gross basis. Alternatively, some countries might take the position based on their domestic law that income from technical and other similar services was not income from carrying on business or income from professional or independent personal services; as a result, such income was "other income" that was taxable by a source country if the income arose in the source country in accordance with paragraph 3 of article 21. There was no limit on source country taxation of other income under article 21 so that such tax might be imposed as a flat-rate withholding tax on the gross amount of the payment. In effect, there was no threshold requirement for source country taxation of other income under article 21.

70. He expressed the view in this respect that allowing unlimited source country taxation of fees for technical services as other income under article 21 was inappropriate in policy terms. Earning fees from the performance of technical services typically involved significant expenses. Therefore, any source country tax should be imposed on a net basis or should be limited if imposed on the gross amount of the payments. While there seemed to be widespread recognition that source countries should be entitled to tax interest, royalties, and technical fees that constituted business profits even in the absence of a permanent establishment, the concern was that the source country should tax these amounts on a net basis. If a non-resident derived interest, royalties, technical fees or other similar amounts that did not form part of the non-resident's business profits, it was appropriate, he considered, for the source country to tax the amounts up to a ceiling, as established in articles 11 and 12 of the United Nations Model Convention. Source country tax in those situations could be justified by reference to the base erosion principle. Mr. Arnold discussed how such a result could be achieved by possible amendments to the United Nations Model Convention.

71. After the presentation, a member of the Committee noted that at the time of the preparation of the current United Nations Model Convention, revenues from services were probably not as substantial as at present, and that was a legitimate factor in addressing this issue. Another member noted that tax revenues from services, in particular technical assistance services, could be a substantial source of revenue for developing countries; the best collection strategy could be withholding taxes at source, but that was often resisted by service-providing countries. Another member expressed the view that the concept of where the service was consumed for tax purposes was a useful one for consideration in that context.

72. **It was agreed that the Subcommittee on Taxation of Services would draw upon Mr. Arnold's valuable work, and other sources, in examining taxation of services, including fees for technical services. Nevertheless, the issues raised by Mr. Arnold were not discussed in any detail at the annual session and no conclusions were reached. As decided at the fifth session, the Subcommittee on Taxation of Services would aim to have an initial report for the next Committee meeting and would also aim at a final report before the expiration of the terms of current Committee members in 2013.**

I. Article 14 of the United Nations Model Convention

73. Liselott Kana, coordinator of the Subcommittee on Article 14, noted that it had been decided at the fifth session that article 14 would be retained in the next version

of the United Nations Model Convention, but the Subcommittee had been set up with a recognition that there were some issues with its current drafting that produced uncertainty and diverging opinions as to its interpretation. Documents E/C.18/2010/4 and E/C.18/2010/CRP.8 represented an initial stage of that work.

74. It was noted that some of the difficulties expressed regarding article 14 were as follows:

(a) *The phrase "other activities of independent character"*. This is neither defined in the United Nations Model Convention nor explained by the commentaries;

(b) *Scope*. The issue of scope has been largely discussed over the past years. The text of article 14 in the United Nations Model Convention uses the term "resident" which, on its face, includes a person being an individual or a company, but it also uses the words "his stay in the other Contracting State" (in subpara. (b)) which seems, on its face, to be referring to an individual. Furthermore paragraph 9 of the commentary to article 14 indicates that the article applies only to individuals. This ambiguity, with textual arguments being made for one reading or the other, has resulted in different interpretations by countries as to the coverage of article 14;

(c) *Difficulties in applying article 14 owing to diverging interpretations on the term "fixed base" and its relationship to the term "permanent establishment"*. The current commentaries point out that the term fixed base is analogous to permanent establishment. However, some members and observers have indicated that they make some distinctions between the two terms;

(d) *Deduction of expenses by a fixed base*. The United Nations commentaries refer to the OECD commentaries and point out that deduction of expenses by a fixed base should be allowed under article 14. However, this possibility is not explicitly mentioned in the text of article 14 — which in some countries creates problems of interpretation. In this respect there was often a problem in civil law countries that common law countries might not have.

75. Ms. Kana indicated that it would probably not be possible to reach an agreement between the members of the Committee (including observer countries) as to the technical understanding of the article as the views already expressed in previous meetings and papers produced indicated that there were strong differences of opinions among all participants. Therefore she suggested that the meeting could concentrate on trying to reach agreement on how to draft the commentary in order for the United Nations Model Convention to be transparent and reflect all members' and preferably observer countries' views. During the debate, some members of the Committee and observers argued in favour of including an amendment in either article 14 (or by drafting an alternative article 14) or in the commentary on article 14 to reflect that some countries had different views than those found in paragraph 9 of the commentary on how to interpret article 14. Most notably this included the view that it could cover non-individuals, a view that it had previously been agreed would be noted in the new commentary on article 5.

76. Others disagreed with that approach, taking the view currently reflected in paragraph 9 of the commentary that the article was properly interpreted as applying only to individuals. Some expressed a particular concern that recognizing an alternative interpretation could be used to "reopen" the interpretation of already

concluded treaties. Others recognized that some countries did not follow the interpretation in paragraph 9 and that this fact might need to be acknowledged.

77. **A small drafting group was asked to propose text addressing these concerns. That text, as agreed by the Committee after a slight change to the wording, will constitute a new paragraph 11 of the commentary as follows:**

> **"Some countries interpret article 14 differently from the interpretation delineated in paragraphs 9 and 10 above. These countries may, therefore, wish to clarify their positions and agree on these aspects bilaterally, if not already dealt with."**

78. **It was agreed that no other changes would be made to article 14 or its commentary for the 2011 update, and that the Subcommittee had consequently completed its work.**

J. Definition of permanent establishment: proposed revised article 5 commentary

79. Ron Van der Merwe, Coordinator of the Working Group on Definition of Permanent Establishment, spoke to the papers contained in documents E/C.18/2010/5 and E/C.18/2010/6. He noted that, as indicated in the first of the papers, the proposed commentary on article 5 reflected the new commentary agreed by the Committee at its third session, in 2007, with proposed changes to deal with the amendments to the text of article 5 agreed at the 2009 annual session and reflected in the report of that session (E/2009/45, paras. 17-19). In accordance with the Working Group's mandate, however, the proposed commentary also addressed the option of removal of article 14, should negotiating countries agree to do so in a bilateral treaty. This reflects the decision taken by the Committee at its fifth session, in 2009 (ibid., para. 18).

80. Mr. Van der Merwe noted that some minor typographical and stylistic changes had been made also to the text, as highlighted in the papers, and it was considered that these were consistent with decisions made by the Committee and unlikely to be controversial.

81. The Secretariat also noted that two typographical changes had been introduced into the paper at an editorial stage that would be corrected: In the annex to document E/C.18/2010/5, at the last dash point of paragraph 1, there would be a minor change to clarify, that the United Nations Model Convention did not differ from the OECD Model Convention in having an independent agent exception, but rather in having a particular exception to that exception for agents devoting all or nearly all their time to a particular client and not dealing with the client on an arm's length basis. In document E/C.18/2010/6, in proposed paragraph 15.22, the words "remuneration is not borne by a permanent establishment" should *not* be struck through.

82. **After some discussion, the proposals were accepted, subject to the changes noted by the Secretariat and the following agreed changes:**

(a) **Deletion of the words "In the relatively small number of cases" and "likely to be very rare in practice" in paragraph 15.10 of the revised commentary;**

(b) **At the end of paragraph 15.2, the last sentence should end with a full stop after "delete article 14", with the words following removed;**

(c) **At the end of proposed paragraph 15.6, the following words should be added: "Some members of the Committee were of the view, however, that the words '(for the same or a connected project)' should be eliminated as no such requirement exists in article 14."**

K. Concept of beneficial ownership

83. The Coordinator of the Working Group on the Concept of Beneficial Ownership, Henry Louie, introduced document E/C.18/2010/CRP.9. He reminded participants that the Working Group was mandated to follow up on the beneficial ownership concept work begun by the former Subcommittee on the Improper Use of Treaties, and to finalize a short addition to the commentaries required on some practical aspects of applying the concept.

84. He noted that the paper addressed some of the interpretational issues in this area, including differing views about whether reference should be had to domestic law meanings on the basis that it was an "undefined term", or whether there was an applicable "international meaning" so that the context did not allow resort to the domestic law. The paper described the practice in addressing beneficial ownership in the United States and China, as examples of the different approaches taken internationally.

85. Mr. Louie indicated that the proposed new text for the commentaries on "beneficial ownership" was informed by current discussion in the OECD context on those issues, though it was unclear what the results of that discussion would ultimately be. The proposed changes were modelled on the OECD commentary, which had a greater discussion of the term than existed under the United Nations Model Convention. In essence, the proposals sought first (at para. 12) to make clearer that the term gave greater definition to the concept of whether a dividend, and so on, was "paid to" a person. Secondly, it clarified, at paragraph 12.1, that it was inconsistent with the object and purpose of a treaty to give benefits to mere agents or nominees.

86. Mr. Louie noted that the latter part of paragraph 12.1 of the OECD commentary had been placed in square brackets because it seemed to state that the residence State principles of beneficial ownership should apply, a matter upon which he considered there was no international consensus. In his view, it conflated separate issues of beneficial ownership on the one hand and improper use of tax treaties on the other. He noted that the proposed paragraph 12.2 merely elaborated in more detail an idea in the current commentary.

87. In the discussion that followed, the difficulty in achieving precise agreement on what the term "beneficial owner" meant was discussed, and the importance of noting that the term was not used in a narrow or technical sense was noted as an important step. The comment was made that the proposed text should begin with some more discussion of what the issues in this area were and Mr. Louie said he would be willing to attempt that. Several of the participants took the view that the words "in the State of residence", in paragraph 12.1 of the OECD commentary, was specific to a situation where the treatment by that State was the relevant one and did

not have a wider impact, and the comment was made that the OECD commentary, while not perfect, would be a useful step forward, and further changes could be made in future where appropriate. Some of those suggesting the removal of the last part of paragraph 12.1 proposed this on the basis that it could confuse the beneficial ownership and improper use of treaty issues, while those supporting the retention of those parts of the OECD commentary thought that the reference to "a mere fiduciary or administrator" was important in indicating the circumstances when a conduit company would not be the beneficial owner.

88. **The Committee decided that the full OECD commentary should be cited, without the modifications originally suggested in the paper, but Mr. Louie would consider whether it was possible to give examples which indicated the issues raised by "beneficial ownership" to assist, in particular, developing country users in understanding and addressing the issues.**

L. Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

89. Bernell Arrindell, the Coordinator of the Subcommittee on Revision of the Manual for the Negotiation of Tax Treaties gave an update on the progress of revision on the Manual, taking into account changes made in the United Nations Model Convention and the commentary. He noted that progress had been slow and it was necessary to make significant progress in the next 12 months. He also commented that it was important that the Manual must not repeat what was in the United Nations Model Convention and the commentary and there should be no duplication of the work of the Subcommittee on Capacity-Building. He noted that the timetable for the Manual was ambitious — presenting a final draft Manual at the next annual session of the Committee in October 2011 — but considered it achievable with input from members and observers, including comments on the papers before the Committee at the sixth session.

90. Frank Brunetti and John Bischel then presented document E/C.18/2010/CRP.10 for comment, explaining the history of the Manual and its revision, and the direction given by the Committee in past years.

91. The Secretariat noted that it would seek to assist the Subcommittee in that work. Practical issues such as how to develop a negotiating strategy and set up a negotiating team could usefully be enlarged in the next version of the Manual, and perhaps some useful attention could be paid to including basic negotiating strategies, including negotiation from an apparently weak position. Several other speakers agreed with that approach.

92. The Secretariat also noted that a study from Wim Wijnen of the International Bureau of Fiscal Documentation attached to the previous (2003) version of the Manual was a useful analysis of the adoption or otherwise of certain United Nations Model Convention specialities, and as the Secretariat had noted in the past, perhaps the Subcommittee might consider involving him in the project, if he was available. The representative of the International Bureau noted that a formal request from the Secretariat might be useful in that regard.

93. Another observer noted that more was needed on specific concrete situations, including pitfalls, dangers, what could go wrong, and so on. Several speakers noted

that too large a manual might defeat its purpose, and that including particular treaties in full might not be as effective as extracting and addressing particular provisions. The coordinator of the Subcommittee agreed with that point.

94. Other participants noted that part 1 should include a third possible motivation for a tax treaty — to have an economic relationship with another country with a view to economic growth, including by removing barriers to cross-border transactions. The Coordinator agreed with these comments. Another participant commented that the Manual should address the aspect of double non-taxation. Others noted the need for wide coverage of websites, but the general view was against including the sites of private advisers in such a document.

95. The Coordinator said the next version would have a clearer structure. He noted that the Subcommittee was still seeking completion by the end of 2011.

96. **The Subcommittee was thanked for its work and invited to continue with a view to early completion of the Manual.**

M. Capacity-building

97. Ifueko Omoigui-Okauru, the Coordinator of the Subcommittee on Capacity-Building, presented an update on the work of the Subcommittee included in document E/C.18/2010/CRP.11/Add.1. She started by providing a short overview of the Subcommittee, including its history, membership, mandates and work methodologies.

98. The Subcommittee had met three times so far: in Abuja, Amsterdam and Geneva. During those meetings, the Subcommittee agreed on the following priority areas for its work programme: (a) understand and segment the target audience; (b) conduct a needs analysis; (c) understand global issues and develop a response plan; (d) develop and implement an effective communication and information-sharing strategy; and (e) develop a road map to implement the Subcommittee's mandate.

99. In implementing its agreed workplan, the Subcommittee undertook the various activities outlined in document E/C.18/2010/CRP.11/Add.1.

100. The speaker also described specific funding interventions and capacity-building initiatives to date, including by the German Agency for Technical Cooperation, the International Bureau of Fiscal Documentation, Real-time Pay/Real-time value-added tax and South-South Sharing of Successful Tax Practices (S4TP). A list of countries which benefited from those interventions and initiatives is contained in the appendix to E/C.18/2010/CRP.11/Add.1.

101. According to Ms. Omoigui, a major challenge faced by the Subcommittee was the difficulty in reaching the right individuals in developing countries when offering training courses and circulating questionnaires for comprehensive needs assessment. She called for designating regional coordinators to facilitate reaching countries. She also called for support in the following areas: contribution of technical input to the website, identifying funding opportunities, provision of pro bono training courses, facilitating responses to the questionnaires, and provision of direct support to tax administrations.

102. Victor Thuronyi provided an overview of cooperation on capacity-building in taxation as outlined in document E/C.18/2010/CRP.11. The purpose of the paper was to give the various aid agencies and assistance-seeking Governments an idea of the types of assistance available, what organizations were most active in specific areas, and the context, administrative framework, and financing of that assistance. The main feature emerging from the survey was the great variety of agencies involved in this work.

103. Mr. Thuronyi said that there were several policy issues which should be addressed, including the need for greater coordination and the lack of information in the training area. There was a need to identify capacity-building needs (a strategy for training) and how these needs could be met.

104. Mr. Thuronyi noted that it might not be possible to have one agency coordinate everybody else but thought should be given as to how to move in the direction of coordination, some on a regional basis and some through the Committee. There was, however, also a benefit in a lack of central control as it promoted creativity.

105. Chris Williams and Richard Gray then presented the new S4TP project website, which aimed to develop a dynamic hub of online information and learning for tax administrators in every United Nations member country and to create a virtual community in which knowledge and expertise and technical assistance in the area of international tax cooperation could be shared. Such a website needed to be simple, accessible, timely, relevant, media rich, collaborative and up to date.

106. Mr. Williams noted that the website would serve the functions of:

(a) Helping developing country Governments to find the tax information they required;

(b) Supporting developing country Governments in tax learning;

(c) Improving sharing of information about the most relevant topical tax issues for developing countries;

(d) Offering “how-to” information to these Governments such as case studies, new approaches and technologies, and lists of recommended websites;

(e) Promoting the work of the Subcommittees;

(f) Promoting what developing countries were doing;

(g) Helping multinationals and non-governmental organizations dealing with developing countries;

(h) Helping to link funders with applicants.

107. Comments from Committee members were invited to test the website and provide feedback. The site is available at http://www.s4tp.org.

108. It was noted that this was not the official website of the Committee, but that the Secretariat would be consulted with and, if necessary, content could be cleared with the Committee.

109. **The Subcommittee was thanked for its work and invited to continue that work, and the S4TP website was welcomed.**

110. **On the subject of capacity-building and technical assistance more generally, the need for technical assistance and capacity-building from a United Nations perspective was noted several times during the annual session, and the Secretariat indicated that the funding for United Nations technical assistance and capacity-building continued to be a problem — there was still no dedicated funding for such tax-related activities. It was noted that Pakistan and Viet Nam had, for example, generously offered to host regional events, but the costs of ensuring sufficient developing country participation, particularly the cost of airfares, would still have to be found before such events could occur. Donors were urged once again to contribute to the United Nations Tax Trust Fund to support this and other international tax cooperation activities. The valuable assistance provided by Norway in providing two associate experts to the Secretariat was acknowledged, as was the assistance of the development arm of the German Government in furthering capacity-building work.**

N. Tax cooperation and its relevance to major environmental issues, particularly climate change

111. The Secretariat introduced the scoping paper on this subject (E/C.18/2010/CRP.12). The assistance of the S4TP project, and of the Special Unit for South-South Cooperation of the United Nations Development Programme in particular, in preparing the paper was acknowledged.

112. It was noted that the paper had a specific focus: whether and how international cooperation in tax matters would assist in making country responses to climate change as effective as possible. There were, in particular, issues of how to apply double tax agreements to profits on trading of emissions permits, and some of the considerations might differ as between agreements following the United Nations Model Convention and those following the OECD Model Convention. If article 12 or article 21 applied to such profits, then the differences between the two models might be especially significant. The applicability or otherwise of article 6, with emissions being treated as immovable property under domestic law was also deserving of further consideration.

113. A key issue was whether greater international tax cooperation could render more effective carbon taxes applied by countries; limiting the possibilities of double taxation in this area, on the one hand, or avoidance and evasion on the other.

114. One observer expressed the view that such work was perhaps premature in the treaty context, that profits on trading of permits could not fall under article 21 as “Other income”, and that in any case such work might best await developments in other forums on climate change, notably the United Nations Climate Change Conference in Cancún. The Secretariat noted that this subject would need to be addressed from the perspective of tax cooperation, whatever the outcome of specific conferences, as there were already domestic carbon tax and cap and trade regimes raising the issues discussed in the paper, and that the Committee could decide what, if any, work it should do on the subject after the issuance of a further Secretariat paper in 2011.

115. Several members and observers noted the importance of this work. One member noted, however, that there were important areas where cooperation on other

environment tax matters was needed, and that it would be useful if the work could be broadened to address some of those issues.

116. **The Committee thanked the Secretariat for the paper and agreed that the Secretariat should report back with a further consideration of these issues for the seventh session.**

O. Tax competition in corporate tax: use of tax incentives in attracting foreign direct investment

117. The issue of tax incentives was introduced by Stefan Van Parys of the University of Ghent, representing the Investment Climate Department of the World Bank Group, on the basis of a paper prepared by the Investment Climate Advisory Services of the World Bank Group as a framework for evaluation of the effectiveness of tax incentives in developing countries (E/C.18/2010/CRP.13).

118. Mr. Van Parys noted the conclusions of the paper that, when deciding whether to offer tax incentives, developing countries should perform a cost-benefit analysis to establish whether such incentives were economically justifiable. Tax incentives should not only bring additional investment but also offer social benefits through spillover effects to other sectors of the economy.

119. The paper made specific recommendations to developing countries considering introducing tax incentives. The incentives should be automatic as opposed to discretionary, simple, transparent, and investment-oriented rather than profit-oriented (investment allowances, tax credits, accelerated depreciation rather than tax holidays). Incentives should be included in tax legislation and their use should be monitored and audited regularly.

120. Comments were made on Mr. Van Parys' presentation by María Amparo Grau Ruiz of the Completense University of Madrid. She noted that tax incentives should be transparent and performance-based. Governments should prepare regular tax expenditure statements measuring and monitoring the costs of tax incentives, with parliamentary scrutiny. Incentive policies should be reviewed periodically to assess effectiveness in helping to meet their goals and, if necessary, expanded, diminished or removed. Greater international coordination was needed to assist countries in this area, but differences in definition and methodology made that difficult.

121. The issue was opened for discussion and among the points raised were that:

(a) There was a need to build capacity around calculating and evaluating the tax expenditure side of incentives;

(b) The economy and the development stage of particular countries were central in assessing the importance or effectiveness of tax incentives;

(c) Incentives should only be granted by the Ministry of Finance, which would best understand the tax foregone by the incentives, and they should be reviewed periodically and removed if they no longer met their purpose, and should be made public.

122. **It was noted that this work completed the mandate given to the Secretariat unless the Committee sought further work on the issues. There was no such request for further work at this stage.**

P. Consequential matters

123. The Chair noted that several subcommittees and working groups had successfully completed their work and it was in the interest of the Committee that such subgroups should be disbanded. The following subcommittees were therefore thanked for their work and disbanded: **Exchange of Information** and **Article 14 of the United Nations Model Convention**. The following Working Groups were also disbanded: **Definition of Permanent Establishment; Assistance in Collection; Islamic Financial Instruments; Improper Use of Treaties**.

Chapter IV
Dates and agenda for the seventh session of the Committee

124. In view of its consideration of its priorities, and the discussions during the sixth session, the Committee decided upon the following draft agenda for the seventh session:

Draft agenda for the seventh session of the Committee

1. Opening of the session by the representative of the Secretary-General.
2. Election of the Chair and Vice-Chairs.
3. Remarks by the Chair of the Committee.
4. Adoption of the agenda and organization of work.
5. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) United Nations Model Tax Convention/update;
   - (b) Dispute resolution;
   - (c) Transfer pricing: practical manual for developing countries;
   - (d) Article 13: capital gains taxation of development projects;
   - (e) Tax treatment of services;
   - (f) Concept of beneficial ownership;
   - (g) Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
   - (h) Capacity-building;
   - (i) Tax cooperation and its relevance to major environmental issues, particularly climate change;
   - (j) Further issues for consideration of the Committee.
6. Dates and agenda for the eighth session of the Committee.
7. Adoption of the report of the Committee on its seventh session.

125. **The Committee decided to hold its seventh session in Geneva from 24 to 28 October 2011.**

Chapter V
Adoption of the report of the Committee on its sixth session

126. **The Committee approved and adopted the present report for submission to the Economic and Social Council, the detail to be settled after the annual session.**

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