



Secretariat

Distr.: Limited
19 June 2001

Original: English

**Ad Hoc Group of Experts on International
Cooperation in Tax Matters**

Tenth meeting
Geneva, 10-14 September 2001

**Draft Report of the Meeting of the Steering Committee of
the Ad Hoc Group of Experts on International Cooperation
in Tax Matters held in Beijing from 23 to 27 April 2001***

* This paper was prepared by the United Nations Secretariat.



1. Introduction

1. In its resolution 1273 (XLIII) of 4 August 1967, the Economic and Social Council requested the Secretary-General to set up an *ad hoc* working group consisting of

“experts and tax administrators nominated by Governments, but acting in their personal capacity, both from developed and developing countries and adequately representing different regions and tax systems, with the task of exploring, in consultation with interested international agencies, ways and means of facilitating the conclusion of tax treaties between developed and developing countries, including the formulation, as appropriate, of possible guidelines and techniques for use in such tax treaties which would be acceptable to both groups of countries and fully safeguard their respective revenue interests.”

2. In its subsequent resolutions 1980/13 of 28 April 1980 and 1982/45 of 27 July 1982, the Economic and Social Council emphasised the need for the Ad Hoc Group of Experts to

- (1) Formulate guidelines for international cooperation to combat international tax evasion and avoidance;

- (2) Continue the examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and consider the experience of countries in bilateral application of the Model Convention;
- (3) Study the possibilities of enhancing the efficiency of tax administrations and formulate appropriate policy and methodology suggestions;
- (4) Study the possibilities of reducing potential conflicts among the tax laws of Various countries and formulate appropriate policy and methodology suggestions.

3. The Programme Budget for the Biennium 2000-2001 (Sub-programme 8) in Parliamentary documentation has mandated the preparation of the revised United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. Accordingly, to consider the draft version of the United Nations Manual, the meeting of the Steering Committee of the Ad Hoc Group of Experts on International Cooperation in Tax Matters was held in Beijing, People's Republic of China from 23 to 27 April 2001. The names of the members who attended the meeting may be seen in Annex1.

4. The **Terms of Reference** for the Steering Committee were as under:

1. To review the work of the Group of Experts in the areas of
 - revision and update of the *United Nations Model Double Taxation Convention between Developed and Developing Countries*;
 - revision and update of the *Manual for the Negotiation of Bilateral Tax*

Treaties between Developed and Developing Countries;

- transfer pricing;
- new financial instruments;
- electronic commerce and taxation; and
- mutual assistance in collection of tax debts.

2. To take decisions and formulate recommendations on the agenda issues to be discussed in the Tenth Meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters.

II. Opening of the meeting

5. Mr Abdel Hamid Bouab, Secretary, Ad Hoc Group of Experts welcomed the members of the Steering Committee and observed that the meeting of the Steering Committee being held in Beijing was in continuation of the traditional approach of the Group of Experts which had appointed a Focus Group to undertake the revision and update of the *United Nations Model Double Taxation Convention between Developed and Developing Countries*. The basic objectives of the meeting were to prepare an agreed draft of the revised and updated *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* and make recommendations on the agenda issues before the Tenth Meeting of the Group of Experts.

6. Mr Bouab explained that the revised Manual would serve as working material for tax administrations in negotiating bilateral tax treaties, as well as by academic institutions, and professional organizations. He emphasized the need to highlight the impact of globalization, Millennium Summit Declaration, Secretary-General's Report to the Preparatory Committee on Financing for Development in the revised Manual. Moreover, the role of foreign direct investment as a relevant factor in mobilization of financial resources will also be incorporated. He further observed that the revised Manual should reflect the changes brought about in the international economic, political and financial environment during the last two decades and contain practical and useful approaches to problems in international taxation. The technical aspects relating to source, nationality and residence principles, as well as international tax evasion and avoidance and provisions in comparative tax laws should also be taken into account. Lastly, Mr Bouab emphasized that the agreed draft of the UN Manual would be considered by the Tenth Meeting of the Group of Experts in Geneva in September 2001.

Proceedings of the Steering Committee

7. The members of the Steering Committee agreed that the revised and updated Manual should be less complex and simplified version intended for readers who are not well-versed in international taxation. While dealing with the text of the draft Manual as prepared by the Secretariat with the assistance of Prof. McIntyre, the following conclusions reached :
- a) Globalization and the resulting increase in capital mobility have created opportunities for

potentially harmful tax competition among countries eager to attract foreign investment.

Globalization also has serious implications for the tax systems of developing countries and economies in transition. In the Introduction, the portion dealing with globalization issues should reflect the consequences of the growth of electronic commerce, tax havens and possibility of reduced tax revenues. In particular, the paragraph dealing with globalization and international taxation should be redrafted to bring out its implications for the developing countries and economies in transition.

- b) It was necessary to highlight specifically the role of bilateral tax treaties in promoting economic growth, the avoidance of double taxation and its potential to combat international tax evasion and avoidance. There are several references in the draft to the material dealing with Agenda 21, United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 which should be omitted. Instead, they should be replaced with references to the observations in the United Nations Millennium Declaration relating to the need to make the globalization process fully inclusive and equitable and as also those in the Report of the Secretary-General on Financing for Development.

- c) The portion dealing with historical perspective in the Introduction should be rationalised and suitably shortened and paragraphs should be rearranged to reflect the logical sequence.

Moreover, there should be a detailed explanation showing the advantages as also the justification for entering into the bilateral tax treaties and the special benefits they confer in avoidance of double taxation.

d) In Part 1, in Chapter 1, dealing with International Double Taxation, pages 16 to 19 should be suitably modified in the manner indicated. In chapter 2, dealing with International tax evasion and avoidance, there are several areas where detailed explanations will be needed, such as, thin capitalization, technical assistance, fictitious claims for deduction of commissions, royalties, technical services fees and similar expenses, new financial instruments, electronic commerce, improper allocation of expenses, tax avoidance through foreign holding companies and trusts, treaty overrides, UN Bribery Resolution 1983-85 and US Government resolution regarding non-deductibility of bribes paid by US corporations in foreign countries.

e) As indicated in relevant places, additional material will be required to illustrate the cases of international tax evasion and avoidance by references to important cases decided and the principles laid down therein. However, unless specifically warranted, no names of individual countries should be given.

f) Several substantive and verbal changes suggested by the members of the Steering Committee will be incorporated in the draft to enhance the utility of the Manual.

8. The Steering Committee discussed the other agenda items as also the state of preparations of the L series and CRPs (Conference Room Papers) for the Tenth Meeting of the Group of Experts. The following decisions were taken :

a) **Transfer pricing** : Mr. Pieter Vogelaar (The Netherlands) will be the Focus Person to prepare a paper on the latest developments on this subject in the OECD. Mr Thuronyi

(IMF) will also contribute on this subject. Mr. Nouredine Bensouda (Morocco) will prepare a paper on "Approach to Transfer Pricing disputes". China's representative would also give his views.

- b) **Training requirements :** Mr John E. Atta Mills (Ghana) and Mr Mayer Gabay (Israel) will prepare a paper on assessment of training requirements. The paper will take a strategic look at steps taken by developing countries to improve technical capacity of its tax administrators.
- c) **Tax treatment of new financial instruments:** The paper on this subject will contain recommendations for consideration of different types of countries; there will be emphasis on developing countries without neglecting the conclusions of developed countries. There will be general and specific guidance to developing countries regarding the focus on next five years : steps that developing countries can take to protect their revenue base and the way these countries can devise and enact legislation on this subject.
- d) **E-commerce and taxation :** The paper on this subject will deal with conceptual aspects and approach. Prof. Hellerstein will be asked to update his earlier paper on the subject with an addition on "Legislation in e-commerce".
- e) **Mutual assistance in collection of tax debts:** Mr. Vogelaar will prepare a paper on this subject on the lines of the earlier material on this subject presented by Mr. Bunders at the time of the Ninth Meeting of the Group of Experts.

Annex 1

The following members of the Steering Committee were present:

1. Mr. Antonio Hugo Figueroa, Argentina (Chairman)
 2. Mr. John Evans Atta Mills, Ghana
 3. Mr. Noureddine Bensouda, Morocco
 4. Mr. Mayer Gabay, Israel
 5. Mr. Pieter J. Vogelaar, The Netherlands
 6. Mr. Zhang Zhiyong, People s Republic of China, (Special Invitee)
 7. Mr. Victor Thuronyi, IMF (Special Invitee)
 8. Prof. Michael J. McIntyre (Consultant)
 9. Mr. Abdel Hamid Bouab, United Nations, Secretary, Ad Hoc Group of Experts
 10. Mr. Suresh Shende, United Nations, Assistant Secretary, Ad Hoc Group of Experts
-