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International Cooperation in Tax Matters

Report of the Ad Hoc Group of Experts on International Cooperation in Tax Matters on the work of its eleventh meeting

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DESA

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Contents

Introduction

A. Terms of reference

1. The Economic and Social Council, in its resolutions 1980/13 of 28 April 1980 and 1982/45 of 27 July 1982, set out the terms of reference of the Ad Hoc Group of Experts on International Cooperation in Tax Matters, as follows:

1. Formulation of guidelines for international cooperation to combat tax evasion and avoidance.

2. Continuing the examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and consideration of the experience of countries in bilateral application of the Model Convention.

3. Study of possibilities of enhancing the efficiency of tax administrations and formulation of appropriate policy and methodology suggestions.

4. Study of possibilities of reducing potential conflicts among the tax laws of various countries and formulation of appropriate policy and methodology suggestions.

B. Opening of the meeting

2. The proceedings were opened by Mr. Abdel Hamid Bouab, Secretary of the Ad Hoc Group of Experts on International Cooperation in Tax Matters, who welcomed the members of the Group of Experts, observers and other interested parties to its eleventh meeting. Mr. Bouab, in his welcoming remarks, reviewed the work and accomplishments of the Group of Experts, noting particularly the publication of the *United Nations Model Double Taxation Convention between Developed and Developing Countries* and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. He observed that the Group of Experts had conducted training tax workshops in Amsterdam, Beijing, and Brasília. He also noted that the Group of Experts had expanded over the years and now had 25 members, one third of whom were from capital exporting countries and two thirds from developing countries and countries with transitional economies. Mr. Bouab then presented for approval the agenda items and introduced the new members of the Group of Experts, namely, Mr. Kenneth Allen (Australia), Ms. Luciana Mesquita Sabino de Freitas Cussi (Brazil), Mr. Liao Tizhong (China), Mr. Mahmoud Mohammed Ali (Egypt), Mr. Pascal Saint-Amans (France), Mr. John Evans Atta Mills (Ghana), Mr. Panna Lal Singh (India), Mr. Keith Engel (South Africa) and Mr. Andrew Dawson (United Kingdom of Great Britain and Northern Ireland).

3. Mr. Bouab also briefed on the Monterrey Consensus of the International Conference on Financing for Development, which had encouraged, inter alia, strengthened international tax cooperation through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition.

4. In his opening remarks, Mr. Antonio Hugo Figueroa, Chairman of the Group of Experts, observed that model tax conventions reflected concepts developed many years ago. He noted the difficulty of working with this model under current economic conditions and stressed the need to keep tax regimes updated. The goal in the forum provided by the meeting of the Group of Experts, he suggested, was to foster fruitful discussions that would lead to improvements in the United Nations model tax conventions and related materials. On the other hand, he emphasized that the meeting was highly important given the need to consider, taking into account the United Nations Millennium Declaration and the Monterrey Consensus, the possibility of suggesting changes in the way the Group of Experts carried out its work.

5. Referring to agenda items 3-12, Mr. Bouab expressed the hope that the members of the Group of Experts would find the subjects of topical interest and would exchange views on the developments that had been taking place since the tenth meeting of the Group of Experts.

6. *Agenda item 3* (***Mutual assistance in collection of debts and protocol for the mutual assistance procedure***). The fact that jurisdiction to deal with both the substantive and procedural aspects of tax collection may involve different arrangements regarding the status of private parties vis-à-vis the faculties, powers, duties and privileges of the tax administration in each State, suggests the need for individual responses tailored to the structure and administration of the particular State in question. The eleventh meeting should address the issue of mutual assistance in tax collection, which is not dealt with in article 26 of the United Nations Model Double Taxation Convention concerning exchange of information. The subject of a new international instrument for promoting international assistance in tax collection in the form of a multilateral convention on mutual administrative assistance in tax matters should be explored during the eleventh meeting.

7. *Agenda item 4* (***Treaty shopping and treaty abuses***). Treaty shopping exists when a resident person of a particular State takes steps or actions to establish a link for himself or his activities to another State with the intention of obtaining entitlement to benefits or relief under the law and treaties to which the other country is party. Tax authorities may challenge treaty shopping situations if an entity or transaction is deemed to lack sufficient economic substance. The eleventh meeting should explore guidelines that might include restrictions on the relief provided by a contracting State so that it should be given only (a) to persons subject to tax in the other country or (b) to persons subject to tax in the other country at a minimum statutory or effective rate or (c) to the beneficial owners of the income concerned or (d) (in appropriate cases where the beneficiary is, in the first instance, a corporation) to companies the shares in which are quoted on a recognized stock exchange or companies the major shareholding in which is not in the hands of persons resident in another country. Arrangements for the exchange of information should, where appropriate, enable information to be provided that may be needed to operate such provisions.

8. *Agenda item 5* (***Interaction of tax, trade and investment***). Recent developments in the World Trade Organization, including the adoption of the General Agreement on Trade in Services, the Agreement on Trade-related Aspects of Intellectual Property Rights and the Subsidies Code negotiated in the Uruguay Round of multilateral trade negotiations, and the Foreign Sales

Corporation/Extraterritorial Income Exclusion litigation, have highlighted the interaction among tax, trade and investment rules. The World Trade Organization is no longer solely concerned with tariff reduction at the border, but is engaged with issues related to foreign direct investment (as reflected, for example, in the General Agreement on Trade in Services) and to direct taxation (as reflected, for example, in the Subsidies Code as applied to direct tax export subsidies and the border adjustability rules). The meeting will discuss the theoretical relationship among tax, trade and investment rules, including the bilateral tax and investment treaties and the multilateral framework for addressing these issues.

9. *Agenda item 6* (***Financial taxation and equity market development***). The Monterrey Consensus addressed the need to sustain stable private financial flows to developing countries and economies in transition by encouraging the orderly development of capital markets through debt and equity markets that encouraged and channelled savings and fostered productive investments. As we have also observed in the Asian crisis in 1997, the availability of long-term financing is essential for sustainable development in developing countries and countries with transitional economies. Financial taxation (taxation on dividends, interest incomes and capital gains), which constitutes one of the most important aspects of this, will affect both equity and fixed income markets development together with other issues such as regulatory and legal frameworks, transparency and disclosure of corporate financial statements, efficient and reliable settlement systems, and a reliable banking system.

10. *Agenda item 7* (***Transfer pricing***). During the tenth meeting, the Group of Experts recognized that the developing countries and the economies in transition should improve their ability to develop and implement transfer pricing rules. The Focus Group appointed in regard to this had made recommendations specifically on policy advice, technical assistance and international cooperation on transfer pricing issues and on avoiding and resolving transfer pricing disputes. The eleventh meeting should examine the feasibility of arbitration as a means of resolving international tax disputes. Most conventions provide for a mutual procedure as a means of resolving disputes concerning the application of the convention to taxpayers. This entails discussions between the competent authorities of the signatory States. The European model and a comparative analysis involving the Organization for Economic Cooperation and Development (OECD) model should be of particular relevance. The recommendation should be based on the Monterrey Consensus.

11. *Agenda item 8* (***Tax treatment of cross-border interest income and capital flight: recent developments***). The tax treatment of cross-border interest income continues to be a major issue in international taxation and in international finance. Recent developments will result in more extensive taxation of cross-border interest income and, consequently, less capital flight and tax evasion. With the growing attention to capital flight, the European Union (EU) Directive on the Taxation of Savings Income and the OECD proposals will presumably lead to greater scrutiny by third countries of the even-handedness of the policies of EU and OECD. Both the EU savings directive and the OECD proposals in effect do not confront the issue of capital flight from third countries into EU and OECD countries. Given that EU and OECD have emphasized the importance of the taxation of capital flight, the reaction of third countries needs to be analysed.

12. *Agenda item 9* (***Electronic commerce and developing countries***). During the discussion in the tenth meeting, it was suggested that the United Nations might undertake research and new initiatives for determining the principles for taxation of electronic commerce and, specifically, concepts of permanent establishment, which may be useful to developing countries and economies in transition. The eleventh meeting should develop guidelines for legislation promoting direct and indirect tax requirements based on the strengthening of the tax base so as to prevent preferential treatment of any specific use of electronic commerce, as well as on principles of transparency, certainty, effectiveness, efficiency and non-discrimination.

13. *Agenda item 10* (***Institutional framework for strengthening international tax cooperation***). During the preparatory phase of the International Conference on Financing for Development, the High-level Panel on Financing for Development headed by Mr. Ernesto Zedillo, former President of Mexico, had formulated recommendations aimed at the establishment of an institutional framework for an international organization or forum for international cooperation in tax matters (see document A/55/1000 of 26 June 2001). The Zedillo Panel specifically endorsed the creation of an international tax organization to cover such issues related to taxation as developing procedures for arbitration, sharing information on tax evasion, compiling statistics and engaging in surveillance. In the same context, in his report to the General Assembly at its fifty-eighth session on the implementation of and follow-up to commitments and agreements made at the Conference (document A/58/216 of 5 August 2003), the Secretary-General recommended that the Group of Experts be upgraded to an intergovernmental commission or committee reporting directly to the Economic and Social Council (para. 167).

14. *Agenda items 11 and 12* (***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***). During its ninth and tenth meetings, the Group of Experts had agreed to proceed with periodic revisions and updates of the United Nations Model Double Taxation Convention every year. Furthermore, at its tenth meeting, the Group of Experts appointed two Focus Groups to make recommendations on transfer pricing and taxation of electronic commerce. The Group of Experts had recognized the need for developing countries and countries with transitional economies to improve their ability to develop, implement and administer transfer pricing and taxation on electronic commerce.

C. Attendance

15. The following members of the Group of Experts attended the eleventh meeting: Mr. Antonio Hugo Figueroa (Argentina), Mr. Kenneth Allen (Australia), Ms. Luciana Mesquita Sabino de Freitas Cussi (Brazil), Mr. Liao Tizhong (China), Mr. Abdoulaye Camara (Côte d'Ivoire), Mr. Mahmoud Mohammed Ali (Egypt), Mr. Pascal Saint-Amans (France), Mr. Wolfgang K. A. Lasars (Germany), Mr. John Evans Atta Mills (Ghana), Mr. Panna Lal Singh (India), Mr. Surjotamtomo Soedirdjo (Indonesia), Mr. Mayer Gabay (Israel), Mr. Errol Hudson (Jamaica), Mr. Armando Lara Yaffar (Mexico), Mr. Noureddine Bensouda (Morocco), Mr. Joseph A. Arogundade (Nigeria), Mr. Riaz Ahmad Malik (Pakistan), Mr. Babou Ngom (Senegal), Mr. Keith Engel (South Africa), Mr. José Antonio Bustos (Spain), Mr. Daniel Luthi (Switzerland), Mr. Andrew J. Dawson (United Kingdom of Great

Britain and Northern Ireland) and Ms. Patricia A. Brown (United States of America). For details, see annex I, section A.

16. The meeting was also attended by observers for the following States Members of the United Nations: Azerbaijan, Bahamas, Barbados, Belgium, Cameroon, Chile, Congo, Cuba, Czech Republic, Egypt, Iran (Islamic Republic of), Ireland, Israel, Italy, Kenya, Malaysia, Morocco, Nicaragua, Nigeria, Norway, Romania, Russian Federation, Rwanda, Singapore, Slovakia, South Africa, Spain, Thailand, Tunisia, Uganda, Ukraine, Venezuela (Bolivarian Republic of), Viet Nam. The observer for the Cayman Islands also attended. For details, see annex I, section B.

17. The meeting was further attended by observers for the following international bodies and other institutions: Commonwealth Secretariat, Organization for Economic Cooperation and Development (OECD), Fairleigh Dickinson University, International Association of University Presidents (IAUP)-California State University/Sacramento, Catholic University of Louvain, London Metropolitan University, World Association of Former United Nations Interns and Fellows (WAFUNIF), Tax Justice Network, Associaçao Comercial de São Paulo, Sheltons — International Tax Counsel, Shacham Tax Law Office, Adachi, Henderson, Miyatake and Fujita, International Chamber of Commerce-Paris, KPMG International. For details, see annex I, section C.

18. The Secretariat, which provided support to the Group of Experts, was also assisted by advisers and resource persons from different areas of international taxation. See annex I, section D.

D. Election of officers

19. The Group of Experts elected Antonio Hugo Figueroa (Argentina) as Chairman and Mayer Gabay (Israel) as Rapporteur. Abdel Hamid Bouab served as Secretary and Masakatsu Ohyama as Assistant Secretary.

E. Adoption of the agenda

20. The Group of Experts adopted the annotated agenda as contained in annex II.

F. Documentation

21. To facilitate its work, the Group of Experts had before it the documents listed in annex III.

G. Work programme

22. The proceedings of the eleventh meeting of the Group of Experts were organized in the work programme contained in annex IV. A United Nations press release on the proceedings of the meeting is contained in annex V.

I. Mutual assistance in collection of debts and protocol for the mutual assistance procedure

23. A paper entitled “Mutual assistance in collection of tax debts and protocol for the mutual assistance procedure” (ST/SG/AC.8/2003/L.2) was presented to the Group of Experts. The presenter reviewed the existing United Nations, Organization for Economic Cooperation and Development (OECD) and European Union (EU) agreements and mechanisms for mutual assistance in tax matters. Another paper entitled “L’assistance internationale au recouvrement des créances fiscales” (ST/SG/AC.8/2003/CRP.2) was also presented.

24. The central question raised was whether a provision similar to article 27 of the OECD Model Tax Convention on Income and on Capital should be adopted by the Group. Additionally proposed was an article dealing with the service of documents. Another issue presented was whether developed countries should offer incentives to developing countries in order to help defray the costs to developing countries of entering into mutual assistance agreements.

25. Traditionally, mutual assistance in tax matters has been provided for in the exchange-of-information article in income tax treaties. These provisions exist within both the United Nations and the OECD model tax treaties. Ascertaining the state of the art in mutual assistance in tax matters requires a consideration of (a) article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries[1] on methods of exchange of information and/or assistance; (b) articles 26 and 27 of the OECD Model Tax Convention; (c) the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters; (d) the OECD Agreement on Exchange of Information on Tax Matters; (e) the EU Savings Tax Directive clause on exchange of information; (f) the EU Directive on the Taxation of Savings Income; (g) the EU Directive on Mutual Assistance for the Recovery of Claims; (h) the OECD Model Convention for Mutual Administrative Assistance in the Recovery of Tax Claims; and (i) the findings of the OECD report entitled *Improving Access to Bank Information for Tax Purposes* (Paris, 2000).

26. In his comments, the discussant remarked that the recent trend internationally was to provide cooperation on collection between taxing authorities. He observed that Morocco had 12 treaties which contained an assistance-in-tax-collection provision, and such a provision could be found in other treaties of the region.

27. A developing-country member pointed out that the fundamental issue in any tax system was the collection of taxes. It was natural, therefore, to consider cooperation on collection. Historically, in 1928, the League of Nations Fiscal Committee had worked on the issue of tax collection. The initial direction, however, was not followed in later models.

28. A question arises whether mutual assistance should be limited only to taxes covered by the convention or should extend to all taxes of the contracting States, including local taxes and social security. One member suggested that requests for collection assistance should be deferred until all internal remedies had been exhausted. In any event, requests for collection must be accompanied by the proper paperwork. It was suggested that precautionary measures, such as seizures, must not interfere with normal business conduct. One observer noted that it would be

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

desirable to allow assistance in collection on a voluntary basis, whose administration costs were small, before a full exhaustion of remedies whose costs would be large.

29. A developing-country member asserted that there must be similar mutual assistance and exchange-of-information provisions between developed and developing countries. However, many developing countries found it difficult to meet the paperwork requirements for making requests and did not have the capacity to respond properly to requests for assistance from a treaty partner. A suggestion was made that perhaps developing countries could receive a subsidy to allow them to comply with requests for assistance. One question was whether such a clause could be enforced in a reasonable way. It was also possible that the United Nations could provide technical assistance to developing countries on tax collection.

30. A number of members from developing and developed countries were of the view that the collection of taxes should not be limited solely to taxes covered by a tax convention. It was noted that, practically, mutual assistance might be limited to taxes covered by tax conventions owing to the lack of capacity of tax administrators to administer State and local taxes. Clauses could be placed in tax conventions that limited mutual assistance owing to lack of capacity. The suggestion was made that the language of a model convention might allow for flexibility, depending on the circumstances of the contracting States.

31. With regard to model treaties, variation existed concerning mandatory versus voluntary mutual assistance provisions. Moreover, the OECD model provided a number of exemptions regarding mutual assistance including: transfers of trade secrets, precluding mutual assistance where another convention would prohibit such assistance, and prohibiting mutual assistance if the result would be to discriminate against the residents of the two contracting States.

32. A member from a developed country pointed out that collection assistance entailed a much bigger commitment than did information exchange. Many developing countries appeared reluctant to agree to information exchange provisions that overrode bank secrecy. One member noted that the United States of America now insisted on an exchange-of-information provision that overrode bank secrecy in all of its new tax conventions.

33. A question was raised on the impact of capacity on exchange-of-information agreements. It was pointed out that the capacity of developing countries to initiate or react to exchange-of-information requests was often quite limited. It was suggested that capacity-building was an important task that needed to be given great attention. One observer noted that OECD and various regional associations of tax administrators could be helpful in capacity-building. Others suggested that the regional tax organizations provided a useful clearing house for ideas but were not engaged in effective administrative training. It was noted that the United Nations was prepared to work closely with any groups offering to assist developing countries in capacity-building.

34. While discussing the capacity-related problems faced by developing countries, it was noted that some countries might be reluctant to sign exchange-of-information agreements because they feared that this would cause deposits in their banks to vanish. According to several commentators, exchange-of-information agreements generally had not worked well for developing countries. Mutual assistance should

begin with support so that developing countries could improve their tax administration. In developing countries, internal tax evasion was such a large problem that exchange-of-information and tax collection agreements might not work.

35. A member from a developed country suggested that international organizations needed to mobilize resources to promote the development of efficient tax administration in developing countries. Governments in developing countries should be made aware of the importance of international taxation and build their capacity in that regard. The United Nations was dedicated to consulting and interacting with every organization that was involved in enhancing the capacity of tax administrators.

36. A member from a developing country asserted that developing countries might have serious constitutional problems in collecting foreign tax debts. Therefore, the United Nations Model Double Taxation Convention must clearly establish what sorts of debts could be collected. In many cases, domestic laws must be changed to permit the collection of foreign tax debts.

37. A member from a developing country stated that (a) reciprocity was very important in exchange-of-information agreements; (b) relative administrative capacity was highly important to the success of such agreements and (c) the effects of differing legal systems (common law versus civil law) must be given careful attention.

38. A member from a developing country stated that there was a need for reciprocity in exchange-of-information agreements. In addition, the existence of a collection agreement could act as a deterrent to tax evasion. Assistance in collection was secondary, one observer stated, to information exchange, and especially to the elimination of banking secrecy.

39. An observer from a developed country noted that even if the United Nations adopted a provision similar to article 27 of the OECD Model Tax Convention, various problems would remain. One problem was that most countries would not allow their tax department to collect a tax debt without providing due process to the taxpayer. Thus, automatic collection might be difficult. In response, it was suggested that all matters relating to defences with respect to a tax claim should be settled before the foreign country was asked to collect a debt. In that event, the only due process requirement might be that the taxpayer should have the opportunity to contest the finality of the judgement in the other State. It was generally agreed that the courts of a treaty partner should not be looking into the validity of the underlying tax claim, since they had no expertise on that matter.

40. A number of speakers expressed concern about the requirements of due process under the constitution of their country. Some members pointed out that various limitations in a country's constitution could prevent the implementation of a proposed article 27. Other members suggested that constitutional issues generally were covered during the treaty negotiations. It was suggested that this matter might require further study.

41. The Secretariat established a focus group to prepare a recommendation to the Group of Experts. The focus group prepared some draft language for the United Nations Model Double Taxation Convention and the Commentaries on the articles thereof. It was decided that the members of the Group of Experts would exchange views on the draft, with the expectation that the matter would be taken up at its next meeting.

II. Treaty shopping and treaty abuses

42. A paper entitled “Abuse of tax treaties and treaty shopping” (ST/SG/AC.8/2003/L.3) was presented. The Group of Experts stressed the importance of the issue, taking into account the many international developments that had occurred since the topic was addressed during its fourth meeting in 1987. In particular, the number of treaties in force had increased dramatically, with the result that treaty networks had to some extent superseded the original bilateral agreement. In addition, OECD had done important work in this area, as reflected in the 2003 update to its commentaries on article 1 of the OECD Model Tax Convention.

43. Three main questions were addressed. First, what was considered a treaty abuse? In that connection, it was necessary to decide who was to determine the existence of an abuse. Second, how were the standards for dealing with treaty abuse being established? In that connection, it was noted that those standards might be included in the treaty itself. Third, was it acceptable to deal with treaty abuse with domestic anti-abuse mechanisms? In that connection, it was suggested that it was necessary to take account of the legal nature of treaties and the obligations derived from the public international law of treaties, mainly *pacta sunt servanda* (article 26 of the 1969 Vienna Convention on the Law of Treaties[2]) and the impossibility of invoking domestic law as a justification for unilateral treaty override of the obligations of the treaty (article 27 of the Vienna Convention). It was also noted that treaties were to be so interpreted as to advance the intent of the signatories.

44. As regards what should be considered treaty abuse, it was noted that it was not possible to come up with a general and common understanding of a definition of a treaty abuse. Nevertheless, there was a broad recognition that treaty abuses existed and must be dealt with properly. The impossibility of reaching an agreement on a common definition of a treaty abuse was partly due to the mechanisms for dealing with tax treaty abuse. Persons covered by a tax treaty were its ultimate beneficiaries, despite the fact that a treaty was signed by contracting States and was intended to advance the interests of the contracting States.

45. Certain common aspects of treaty abuses were stressed, notwithstanding the different legal traditions for dealing with abuses. The existence of an abuse implied an indirect violation of the law, the abuse being contrary to its goal and objectives. Such a violation could be determined only after taking into account the specific circumstances of the case. It was asserted that a treaty abuse generally was determined by national authorities under domestic law patterns, according to the respective legal tradition of each country. For this reason, the concept was likely to vary from State to State. It was also explained that the question of treaty abuse was mainly a question of treaty interpretation — mainly of who were the bona fide beneficiaries of the treaty. It was noted that the provision of a general and common understanding of the meaning of the term in the Commentaries on the United Nations Model Double Taxation Convention would be very useful.

46. Some discussion followed about the identity of the person committing the abuse. Normally, the term “treaty abuse” was used to refer to situations in which the taxpayer was seeking to circumvent the law. However, consideration should be taken of cases in which one of the contracting States had taken advantage of the

[2] United Nations, *Treaty Series*, vol. 1155, No. 18232.

good faith of the other contracting State to the treaty by making a future amendment to the law or by administrative practices that led to significant losses of resources of the other contracting State. The two situations — abuse by the taxpayer and abuse by the contracting State — should be distinguished in framing the rules used to determine the existence of the abuse, in identifying the bodies that would declare the existence of an abuse and in establishing the legal consequences of the finding of an abuse.

47. There was a debate on whether or not treaty shopping was compatible with the goals of tax treaties. It was reiterated that treaty abuse and treaty shopping should not be confused. Treaty shopping related to situations where the person secured the benefit of the treaty without being the legitimate beneficiary of it. Treaty abuse, on the contrary, referred to situations where the result of a certain operation was in contradiction with the treaty. Some representatives from developing countries stressed that treaty shopping was not compatible with the goals of the treaty. Other members of the Group of Experts, however, stressed that treaty shopping was a more complex issue. Some participants mentioned that whenever the treaty shopping issue was considered important, it should be specifically mentioned in the treaty, including countervailing measures to combat it. It was insisted, nevertheless, that in certain treaty shopping situations, general measures countervailing abuse could still be used even in the absence of a specific provision in the treaty.

48. In order to address treaty abuses, some participants contended that there was no need to establish specific rules in a treaty, and there was general consensus that some domestic anti-abuse measures could be used, as occurred in practice in many cases. Other participants expressed a concern, nevertheless, regarding the dangers and uncertainties that this straightforward solution could produce if the limitations derived from the Vienna Convention on the Law of Treaties were not taken into account.

49. Some members from developing countries mentioned that the real concern was to avoid double non-taxation situations, which were not dealt with explicitly in tax treaties. Some members were of the opinion that double non-taxation situations were inconsistent with the goal of a tax treaty; they argued that such situations should be regarded as constituting cases of treaty abuse. Other members expressed some reservations to that view. One participant remarked that the original goal of the work conducted by the League of Nations had been not only to avoid double taxation but to assure taxation once. As one participant remarked, even if it was agreed that double non-taxation should be avoided, the issue remained as to which of the contracting States should obtain the tax revenues from eliminating the non-taxation.

50. One commentator stressed that cases of treaty abuse by the contracting States needed special attention because the Vienna Convention on the Law of Treaties had not foreseen any consequences for indirect abusive breaches of a treaty by the contracting parties but only for cases of serious violation (article 60 of the Vienna Convention). One participant suggested that there was a real need for new tools in order to deal with treaty shopping, taking into consideration the willingness of some States to promote this. In that respect, countries were advised to look carefully into the practices of some States before entering into a treaty with them. A participant from a developing country indicated that developing countries attempting to expand

their treaty network had a need for technical assistance and advice in respect of the structure used by taxpayers to abuse a treaty.

51. An observer from a non-governmental organization stated that there appeared to be a lack of international political will to combat the effect of tax abuse on developing countries, and to assist the tax authorities of those countries in key areas such as: the implementation of spontaneous automatic information exchange, the implementation of measures to effectively combat tax evasion through offshore vehicles, including trusts and foundations, the implementation of measures to reduce the scope and ability of multinational corporations to launder their profits through tax havens, and the implementation of measures to stop smaller businesses from using reinvoicing processes to profit-launder via tax havens.

III. Interaction of tax, trade and investment

52. A paper entitled “The interaction of tax, trade and investment” (ST/SG/AC.8/2003/L.4) was presented to the group. Another paper entitled “Globalization and tax competition: implication for developing countries” (ST/SG/AC.8/2003/CRP.4) was also presented. The presenter discussed the central concern of the papers, namely, that harmful tax competition among developing countries was a major issue in regard to international tax cooperation. Tax competition and how to address it could be well understood by evaluating the interaction of tax, trade and investment as embodied in the bilateral tax treaty network and the multilateral World Trade Organization.

53. The goal of free and fair trade cannot be achieved through tariff agreements only because non-tariff policies such as quotas, preferential treatment and subsidies may generate trade-restricting effects. Of special concern are direct and indirect tax structures that can act as implicit production and export subsidies. Likewise, internal taxes should not discriminate between domestically produced and imported goods, especially when they are used in a particular sector, because such use produces a subsidy effect. Finally, taxation of income flows from foreign direct investment (FDI) in both the source and the resident State can constitute a fiscal barrier to free trade. The resulting double taxation problems are alleviated by bilateral tax treaties. However, tax treaties are designed to maintain an equitable distribution of revenues in the presence of two-way capital flows.

54. A multinational enterprise shifts income to affiliates resident in a tax haven in order to take advantage of lower tax haven rates. Tax havens may be classified as “production tax havens”, which are countries with a very low tax rate on manufacturing income, and “traditional tax havens”, which are countries offering a low tax rate on the income of corporations whose legal domicile is in that country, especially financial centres. Bilateral treaties are of limited use because they are established primarily between developed countries with similar economic structures. Owing to their bilateral nature, treaties cannot deal with the predatory tax protectionism caused by either production or traditional tax havens. What is needed is a multilateral organization designed to deal with the tax competition problem. The United Nations is the obvious venue for setting up such an organization.

55. In his comments, the discussant remarked that developing countries were fighting for capital against developed countries. Taxation goes to the very roots of a country. This competition represents a big dilemma for developing counties because capital is limited and the competition may cause them to offer overly generous tax concessions. In many cases, such tax concessions transferred much-needed tax revenues from developing to developed countries. Hence, developing countries may be relying on tax holidays which may not be in their best interests. Moreover, enterprises will always pressure developing countries not to remove tax incentive by threatening to move their operations out of the country. Developing countries are sensitive about export subsidies because their industry must be protected. While trade and tax matters may appear related, the policies underlying them are different. Trade policies have free trade as their objective, while the objective of the tax treaties is the avoidance of double taxation and the use of the tax system to promote economic development. Measures need to be taken regarding double non-taxation, as bilateral treaties are not sufficient in this regard and the World Trade Organization is not capable of dealing with tax matters. There is a need for a

broader tax forum within which to deal with the issue. In this connection, a multinational agency with a broad membership is needed to deal with tax competition.

56. The discussant also mentioned that the author's concern over the promotion of free trade clearly ignored the often-repeated argument that free trade was not necessarily fair to all parties. Indeed, the dissatisfaction of developing countries with World Trade Organization rules on free trade stems from their belief that they fail to recognize that the playing field is uneven. There cannot be genuinely free trade when some parties to the agreement negotiate from a position of weakness. The World Trade Organization's position on export subsidies and other measures adopted by developing countries to generate employment, protect their industries and generally to strengthen their economies fails to take into account the other "subtle" but sometimes open subsidies granted by developed countries to stimulate their economies.

57. A member from a developing country asserted the need to work on the subject of headquarters tax havens. In that regard, it was useful to look at the EU guidelines on harmful competition. It was also noted that countries were not ready to give up their taxing sovereignty. Yet, developing countries may be wasting their resources by giving tax concessions. As a practical matter, many countries will not give up tax incentives, whatever the merits of the arguments for doing so.

58. A member from a developing country expressed the view that there was a contradiction between the World Trade Organization and tax agreements. In his view, EU felt that tax competition might harm it, but that the tax competition was not a problem for countries outside its region. He also restated the concern of the Group of Experts that treaties had failed to prevent double non-taxation.

59. An observer from a developing country maintained that OECD policies were biased in favour of inward investment which in turn was a major obstacle to development by developing countries. If treaties were not biased, they would work much better. He also asked the Group of Experts to stay away from tax haven jargon because it meant different things to different people. Instead, the Group of Experts should state what the problem actually was. Moreover, tax incentives were used extensively by developed countries during their development process; therefore, the possible use of tax incentives should not be dismissed. National capital in developing countries was not sufficient to generate economic growth at present, hence there was economic stagnation. Tax concessions emerged as a last resort to stimulate investment. Yet, if there were no tax incentives, in practice the investment would not be likely to occur. The solution to the problem was harmonization of tax incentives.

60. A member from a developed country asked what agreements developing countries should enter into. If developing countries did enter into tax conventions, what should their terms be? The member believed that it was very important for the Group of Experts to consider rigorous exchange-of-information agreements between countries.

61. The Chairperson noted that politicians had the last word on tax policy regarding tax incentives or an increase in taxes. The trend at the international level was a reduction in tax burden. Thus, it was not normal to have high taxes and tax concessions. If negotiating with a strong treaty partner, a country would provide tax

concessions. If a country relinquished source taxation, what did it receive in exchange? There was a lack of balance in treaty structures because treaties were drafted for developed countries. A member from a developed country questioned the above conclusion because the United Nations Model Double Taxation Convention had been developed specifically for use by developing countries. The Chairman responded that the United Nations Model Double Taxation Convention, beyond specific points that maintained developing countries' legitimate tax rights, was similar to that of OECD in its structure. Thus, in his understanding, the Group of Experts was working to build a new and balanced United Nations Model Double Taxation Convention, adapted to the new reality, rather than to dismantle it. He remarked that it was important to promote the increase in the flow of capital, basically to developing countries, by eliminating excessive international taxation, but that this needed to be achieved in an equitable way.

62. An observer from a developing country commented that there was a contradiction between higher income taxes and exemptions for foreign investments. It led to tax fraud and problems in collecting taxes. Use of a value-added tax was a better option since it did not discriminate. The Chairman responded that the exclusive use of regressive indirect taxes was not the best way to promote social changes in developing countries. Such practical solutions were being offered by the International Monetary Fund (IMF) as a means to improve the collection of taxes; however, in his view, there was a lack of justice if poor people must support a greater tax burden than the rich to cover the national budget (public expenditures).

63. Some observers noted that the language used to describe tax regimes that provided various tax benefits should be so chosen as to avoid needless offence. They suggested that the use of neutral rather than pejorative language would facilitate debate and enhance the prospects for agreements on substance.

64. It appeared to be the consensus of the Group of Experts that developing countries needed to design tax incentives for investment that were not harmful. In this regard, OECD had produced some good work. The international community was not ready for a multinational agreement on tax competition. Whether to use tax incentives entailed a sovereign decision by each country. However, the Group of Experts noted the ongoing OECD study on how to design tax incentives. Further, the Secretary of the Group of Experts noted that, on 5 August 2003, the Secretary-General had provided that the Group should be strengthened by being converted into an intergovernmental fiscal committee.

IV. Financial taxation and equity market development

65. Two papers were presented dealing with an analysis of the effects of tax structure on economic factors, such as economic growth and equity markets: one entitled “Financial taxation and equity market development: financial market tax policies for developing countries” (ST/SG/AC.8/2003/L.5) and the other entitled “Economic equity market, and trade implications of and interactions with taxation in a multinational setting” (ST/SG/AC.8/2003/CRP.5).

66. As the papers were addressing similar topics, they were considered in a single presentation, with attribution where appropriate. The papers focused on three areas of discussion, encompassing the relationship between tax structure and (a) economic growth and investment flows, (b) capital investment flows and the capital transfer decision model and (c) equity markets.

67. The presenter addressed each of the three areas and provided the results of research that were appropriate to each area. The results showed that there was evidence of a linkage between changes in tax structure and, specifically, economic development in the country of tax change as well as in other countries in the sample, FDI flows occurred between high-tax and low-tax countries, as well as between countries using the exemption method to tax foreign income and those using the foreign tax credit method, and both the demand and supply factors affected equity market development.

68. In general terms, the results were regarded as being of interest and, in some cases, of significant magnitude; the presenter, however, cautioned against the use of such results on two levels. First, inferences could be drawn, but the user must recognize that the research was limited in scope, in that there were numerous non-tax factors that affected economic growth and market development that had not been specified in the model. Second, without an in-depth review of the research design, it was not clear whether biases had been introduced, for example, by including only short-term effects or by failing to distinguish among harmful, beneficial and neutral tax concessions.

69. However, it was pointed out that, even with those caveats, there was value in the use of economic analysis in the discussions held by the Group of Experts. It was nonetheless further stated that such value could be assured only if the research was conducted rigorously and correctly, and care was taken to focus the effort.

70. The discussant presented his observations on the experience of the Mexico equity market. He emphasized the role of the non-tax factors in this type of analysis by referring to the Mexican experience of equity market development through a series of economic and political crises. He recounted, for example, how, during the rise in the price of oil in the 1980s, Mexico had offered better interest rates to attract investment. However, when the price of oil fell so did the fortunes of the country. As a consequence, the Government had to nationalize the banks. The crises led to less participation in the equity markets. The Government chose to issue high-yield debt. These steps were taken in an effort to enhance flexibility and development of the markets, but did not involve the financial centre in the process, with unfavourable results.

71. During the period 1990-1992, there had been a rise in share values, which was presented as one effect of the North American Free Trade Agreement (NAFTA) and

other free trade agreements. This was another example presented by the discussant of the importance of non-tax factors in the assessment of development. In summary, it was suggested by the discussant that taxes were not the only factor affecting the market or market development. Other factors included the search by investors for security and stability, and the fact that, as in the case of financial derivatives, the fiscal framework was behind the equity market. Following the discussant's remarks, many members, observers and others made a number of important remarks and observations.

72. A reoccurring observation was that capital markets needed: confidence, transparency, good infrastructure, a ready workforce, a stable government and political stability. In addition, many participants remarked that tax incentives played a role.

73. Because the world was not homogeneous, several members as well as the presenter recognized that not all capital markets were alike, nor did they react in the same way. Indeed, one member observed that, in his own country, policymakers had been so concerned with the consequences of creating a tax on capital that for some time they had avoided doing so. When they finally imposed a capital gains tax, they found that the equity markets showed little or no reaction.

74. Yet another member recounted the experience of India, where a challenge to the ability of investors to engage in treaty shopping had resulted in a decline in share values. It was suggested that this experience offered an example of the impact of tax treaties on equity markets.

75. A lengthy portion of the discussion open to the floor concerned the imposition or non-imposition of taxes on capital gains of non-residents. For example, the United Nations Model Double Taxation Convention and the OECD Model Tax Convention provided for no tax on capital gains on portfolio shareholdings of non-residents, while they did tax dividend income of those persons. It was suggested by one observer that the non-taxation of capital gains in the source country had probably resulted in double non-taxation in many cases.

76. An observer recounted her country's experience with equity markets and taxation of capital. She recounted how her country during the 1990s had experienced a large inflow of capital. To avoid a "real shock", the country imposed a tax when capital entered the country, that is to say, the tax was paid "upfront". While not currently imposing the tax, the stated country had reserved the right to reimpose it at any time. The member then remarked that, in her opinion, the United Nations and OECD positions on taxation of capital gains and dividends were inconsistent. In support, one participant noted that dividends could sometimes be converted into capital gains quite easily and that some restrictions on very rapid capital flows seemed justified, given the economic waste resulting from the economic shocks of the late 1990s. An observer noted that conversion of dividends into capital gains was less of a problem for portfolio investment.

77. Other members suggested that, based on her experience, tax policy should not be introduced in times of fiscal crises. Indeed, the presenter agreed and suggested that this was precisely one of the observations made in the paper.

78. To illustrate the differences in capital markets, another member compared the equity markets of the United States and the United Kingdom with the markets of developing countries and transitional economy countries. He pointed out that the

United States equity market was shrinking and that the United Kingdom market had experienced only modest growth. His point was that neither would be a good example with respect to testing the effect of taxation on equity markets. His point was that an analyst must know the relevant market.

79. Another observer from a developing market noted that his country had recently opened a stock exchange and had provided generous tax incentives to stimulate it. Currently, it had about 20 companies on its stock exchange and its index was about 100. He suggested that perhaps his country was a good place within which to study the effects of taxation on capital markets.

80. In response, the Chair said that if that country converted to a market economy, it very well might experience substantial growth, which would have nothing to do with taxation. He suggested that if a country tried to provide benefits and incentives to attract capital, in the long run, it might do damage to the economy. The Chair noted that some countries imposed taxes on capital gains and dividends yet their economies still worked. The most important signals, he noted, for attracting foreign investments, among others, were related to juridical security and political, social and economic stability.

81. The presenter observed that in reality one could not equate the taxation of capital gains with that of dividends. He noted that the tax on capital gains to a large extent was a “secondary” tax, that is to say, it was imposed after the security had been created by its initial public offering (IPO). The tax on dividends, however, was a direct tax on corporate income being distributed to a shareholder. If the corporation did not issue a dividend, the wealth remained in the corporation. Hence, this distinction might be a valid basis upon which to treat the two differently. It was noted, nevertheless, that the distinction had validity only if dividends could not be converted into capital gains, as occurred in many countries.

82. Although everyone expects taxes to affect equity markets, this observation alone is not helpful, because other factors play a role. In 20 years of research on market behaviour, some analysts have confused the issue. Consequently, the results of their research may not be reliable.

83. The discussant noted that not all equity markets were the same. Mature markets could not be compared with immature markets. Taxation might not be as important in one market as it would be in another.

84. The Secretary referred to the report of the Secretary-General on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216), and particularly to paragraph 167, where he referred to the need for the Group of Experts to be converted into an intergovernmental body.

85. The Secretary also referred to the impact of tax incentive laws on tax competition and suggested that, inasmuch as taxation might be an important element in the investment decision, tax policies might also be used as an instrument with which to enhance both FDI and portfolio investment.

86. Tax authorities who were concerned that tax incentives were being directed at the foreign Government rather than at the investor might review with the tax authorities of the other contracting State whether a tax sparing credit could be applied. However, he pointed out that to achieve the objective of attracting FDI and

portfolio investment, there was a need for implementing far-reaching reforms so as to create the enabling environment for private sector development and investment. This enabling environment could be provided with the support and assistance of the United Nations under the above-mentioned suggested framework.

V. Transfer pricing

A. Simplified safe harbour procedures

87. A paper entitled “The unitary method and the less developed countries: preliminary thoughts” (ST/SG/AC.8/2003/CRP.7) was presented to the Group of Experts. Two additional papers entitled “The comparable profits methods and the arm’s length principle” (ST/SG/AC.8/2003/CRP.7/Add.1) and “Transfer pricing: experience of Pakistan” (ST/SG/AC.8/2003/CRP.7/Add.2) were also presented. In analysing the first paper, the presenter pointed out that developing countries needed to examine the possibility of income taxation on a source rather than on a residency basis. Developing countries needed to act as a group, in concert, and use common definitions when determining allocable income. The thrust was that developing countries were capital importers, thus effective source-based taxation principles could be used. Serious problems arose when source/residency-based taxation structures were used.

88. The presenter also noted that unitary tax structures avoided the complexity of transfer pricing. Under a unitary structure, the source of income could be determined without relying on transfer pricing. Unitary taxation would take care of the problems of the arm’s-length approach. A study group should be set up to develop a family of formulae for specific businesses, and define standards for the exercise of jurisdiction, foreign currency translation and arbitration procedures. Eventually, it might be possible to agree on a whole model. However, this result depended on developing countries’ overcoming the huge difficulties related to their acting together in their common interest. Thus, it might be impossible to achieve this goal in the near future. In reviewing the other papers, the presenter concluded that the unitary method conflicted with the arm’s-length principle. There was a continuing problem of determining profits under both the unitary and comparable pricing methods because they did not satisfy the arm’s-length principle. In the home country of the presenter, the tax administration taxed income in the hands of a resident that would have accrued in the absence of transfer pricing. This represented an attempt to wriggle out of a problem, but might not constitute a solution to it.

89. The discussant remarked that the suggestion that a working group be established to study a unitary tax for developing countries seemed to be difficult to implement. Even the strongest and most developed countries that had implemented the structure had not been able to use it in an international context. Therefore, this was not a very feasible solution. The different transfer pricing methods were highly controversial and the fierce discussion between developed countries reflected that reality. Perhaps a first step was to see what sort of documents, under international accounting standards, could be agreed upon between all countries, both developed and developing, so that the fiscal authorities had a good and reasonable base upon which to make the transfer pricing adjustment. The Rapporteur noted that, as there were different kinds of developing countries, different kinds of principles were needed. Specific cases of differences should be referred to arbitration with the United Nations authority.

90. The Chairperson explained that the Group of Experts would discuss mediation and arbitration. However, he maintained that it was difficult to secure comparability under the arm’s-length rule. Although the structure might be adequate for the purpose of controlling imaginary prices, tax administrations ran up against

tremendous difficulties. Perhaps use of a safe harbour method for transfer pricing might be a practical alternative. If pricing fell within certain parameters, the tax administration would accept the result. A problem might arise in reconciling safe harbour rules with treaties because safe harbour rules might move away from the normal price. In regard to unitary taxes, it was remarked that a very different result might obtain if the unitary method was used. Hence, the unitary method would be difficult to use on an international basis. Apparently, EU was currently experiencing a conflict over using the unitary method. Transfer pricing was a worldwide problem, because income, like water, tended to flow towards the lowest levels.

91. The Chairperson also explained that the Group of Experts had recommendations concerning the safe harbour norms and standards at the current meeting. Under article 27 of the Vienna Convention, if a country unilaterally adopted a safe harbour, it probably was in violation of its treaties, as the structure of the safe harbour rule was not based on an open market price. In practical terms, it was very hard to apply the arm's-length principle owing to the fact that a Government was asking for more revenue and companies were asking for the application of the terms of their contract, so that there was little or no tax liability. As developing countries might be exporting commodities with a known international price, the arm's-length method could operate effectively without the need for a safe harbour mechanism. The biggest problem existed in the area of intangibles. It was nevertheless noted that even in the case of commodities, some multinational corporations might use charges for alleged services to strip profits from a developing country.

92. A member from a developed country discussed the problem of determining comparables in accord with the arm's-length principle. In his country, the solution had been a system of advanced pricing agreements (APAs). Under the APA structure, multinational corporations were invited to approach the tax office in advance. By negotiation, a range of prices were determined that were in accord with the arm's-length price. The multinational corporation must supply evidence of the arm's-length price. The suggestion was made that developing countries might wish to consider this structure. The Chairperson responded that the needed technical capacity for APAs generally was not available to developing countries.

93. A member from a developing country noted that in theory transfer pricing was supposed to produce a realistic price, but it fell short in reality. Perhaps it was better to go from the specific to the general. There might be a simple division of areas into commodities, intangibles and value-added products. Unfortunately, what was needed was an expert economist with a large amount of data with which to carry out transfer pricing. A member from a developed country agreed that it was good to move from the specific to the general; for example, she was interested in the problem of economies of scale, raised by a member from a developing country. She also noted that OECD had meetings of transfer pricing inspectors to develop issues that were being further developed by the tax administrators in the Group of Experts. An adviser to the Group of Experts pointed out that safe harbours did not work well even for small businesses. The problem was that, although the arm's-length system worked reasonably well for sales of tangible property, when intangible property was put into the mix, the transfer pricing system was less successful, as intellectual property income was difficult to locate by source and very hard to price. The consequence was a tendency to use the profit-split method.

94. An observer suggested that international accounting standards should be used as a basis for obtaining information. Some new form of generally accepted accounting standards was needed whereby companies must disclose their inter-group trading. Affiliated groups would be required to file unconsolidated accounts. Then, tax administrators would find out about the aberrations in the profits of the multinational corporations.

95. A member from a developed country asserted that he could comprehend why the United States used the comparable price method, which relied on publicly available data. In contrast, Japan used secret information from taxpayer returns. In his view, it was very important in transfer pricing that taxpayers and the tax department be given equal footing. Information should not be controlled by tax administrators. The comparable price method could be improved for the purpose of using safe harbours.

96. In conclusion, the Chairperson noted that safe harbours were a practical tool for developing countries. At the same time, however, the topic was a highly complicated one because essentially, as had been pointed out in the OECD commentaries of the Transfer Pricing Guidelines, in order to build them it was necessary to work with presumptions and such presumptions normally went beyond the arm's-length rule. Safe harbour standards must be assessed in case there were treaties with other countries. In some cases, the implementation of a safe harbour might be inconsistent with the objectives of a treaty.

B. Intermediation and arbitration: European Union experience

97. A paper entitled "Intermediation and arbitration: the Arbitration Convention of the European Union for the resolution of transfer pricing disputes" (ST/SG/AC.8/2003/L.8) was presented.

98. A developed-country member indicated that his country was not ready to introduce arbitration into models or treaties. The member stated that it favoured arbitration, but with sovereign decisions rather than an arbitration imposed by treaty provisions, and further, that the practicalities dictated that there were more pressing matters for consideration by the Group of Experts.

99. A developing-country observer said that he was in favour of a treaty provision, as it would supply taxpayers with an element of certainty, that is to say, with the assurance that, with an arbitration provision in the treaty, a decision could be forthcoming.

100. The Chair considered that States should be able to agree on such issues as would enter into the arbitration process in respect of what constituted a reasonable allocation. In that context, taking into account the experience of the developed countries (there had been only one case in EU in several years), developing countries must insist, on the one hand, on improving the efficiency of their tax administrations and, on the other hand, on working with the other contracting State in the field of mutual agreement procedure.

101. A developed-country member indicated developed countries had not adopted arbitration provisions in their treaties. One concern was that developing countries would be put at a disadvantage in that their levels of resources and expertise might

be much lower than those of the developed country on the other side of the arbitration process.

102. A member of a developed country indicated that he was in favour of the provision, noting that this would be a provision that could be accessed by a taxpayer in a taxpayer-versus-country question as well as by a country in a country-versus-country question. A member of a developed country added a new element to the discussion by sharing the fact that much pressure for adoption of the provision had been coming from members of the business sector, as they felt that this would give them some assurance of a timely and binding decision in such matters as might come before the arbitration.

103. Several observers, offering examples of highly complicated issues that had come before them as a result of specific types of business practices in their countries, expressed support for the arbitration, mostly so that they could secure a timely and binding decision and bring additional expertise to bear on the issue. One of those observers made two points: that there was an assumption that arbitration would be neutral and competent, and that arbitrators could be supplied in cases where the countries did not have the resources available at the time.

104. The Chair added a comment to the effect that there needed to be an assumption that any provision dealing with this topic would have to be drafted very clearly and carefully. A developing-country member expressed a concern that addressed the resources-related concern that had been expressed earlier, and pointed out that arbitration would come down to the toss of a coin if the resources and expertise of the parties were not balanced.

105. One developed-country member provided an estimate of costs of arbitration. His estimate was a cost of 50,000 euros per arbitration event. The Chair noted that this was a question related to political considerations because a significant number of countries did not object to applying the arbitration method.

VI. Institutional framework for strengthening international tax cooperation

106. The discussion related to the report of the Secretary-General on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216). The discussion took place over two sessions, on 17 and 18 December 2003.

107. The specific proposal in the section of the document that had been submitted to the meeting addressed the upgrading of the Ad Hoc Group of Experts on International Cooperation in Tax Matters into an intergovernmental body, in the form either of a committee of governmental experts or a special new commission, as a subsidiary of the Economic and Social Council (para. 167).

108. The following is a summary of the presentation of the paper entitled "Institutional framework for international tax cooperation" (ST/SG/AC.8/2003/L.6). The presenter began by stating the two key recommendations of the paper. The first recommendation was that the Ad Hoc Group of Experts on International Cooperation in Tax Matters should be converted into a commission within the Economic and Social Council. A major effect of that change would be that the members of the commission would participate as representatives of their Governments instead of in their individual capacity. As with the Group of Experts, the members of the commission would be drawn from developed, developing and emerging countries.

109. The second recommendation was that the upgraded institution should have a technical staff adequate to support its activities, which might be established through redeployment of staff within the United Nations. The presenter suggested that such a staff might include some tax professionals drawn from accountancy, law and economics. Members of the staff would represent the commission in various international forums and meetings and would attempt to present the views of developing countries and transitional economies at such meetings. The staff would also act as a clearing house for tax materials of interest to developing countries and would organize workshops to give technical assistance on international tax matters. It would not duplicate functions currently performed capably by other international bodies.

110. The presenter explained that the proposed commission would be modelled on the Fiscal Committee of the League of Nations, which had operated effectively in drafting some early model tax conventions. The proposal reflected the view that existing institutional arrangements did not give the developing countries an effective voice on the establishment of international tax norms of great importance to them. The presenter suggested that only a forum formed within the United Nations was likely to have the legitimacy to set international norms. The proposal built on, rather than urged the replacement of, the Group of Experts. Its implementation would not preclude the use of ad hoc groups to deal with particular international issues, nor would it prevent members of the commission from acting in their individual capacity on certain matters.

111. According to the presenter, the proposal had been offered in the context of the development goals established by the Monterrey Consensus of the International

Conference on Financing for Development.[3] It treated the issue of international taxation as part of a development strategy. The Monterrey Consensus had established the critical importance of taxation as the primary engine for mobilizing resources for development. It had also found that domestic taxation could not function well without an enabling domestic environment. The presence of an enabling environment meant that capital flight and international tax avoidance and evasion must be controlled. Given the loss of sovereignty that would result from the opening of an economy to outside investment and trade, countries needed to cooperate to regain their lost sovereignty and to exercise effective control over their domestic tax policy.

112. The discussant generally expressed support for the proposal, indicating that it was important for the developing countries to have a voice when the important norms of international taxation were being established. He also stressed the need for a technical staff to deal with the complicated issues of international taxation on a regular basis. He nevertheless suggested that the technical staff might offer tax assistance on domestic tax matters in some instances, owing to the importance of upgrading capacity in many developing countries.

113. The Secretary then summarized recent developments with respect to the proposal at the United Nations. He noted that the aforementioned report of the Secretary-General had stated that the Ad Hoc Group of Experts on International Cooperation in Tax Matters should be converted into an intergovernmental body, in the form either of a committee of government experts or of a special new commission, as a subsidiary body of the Economic and Social Council. He also called to the attention of the Group of Experts the recent draft resolution submitted by the Vice-Chairman of the Second Committee, Mr. Henri S. Raubenheimer (South Africa), on the basis of informal consultations held on draft resolutions A/C.2/58/L.39 and A/C.2/58/L.40, entitled “Follow-up to and implementation of the outcome of the International Conference on Financing for Development” (A/C.2/58/L.83), in which the General Assembly requested the Council, in its examination of the report of the Ad Hoc Group of Experts on International Cooperation in Tax Matters at its next substantive session, to give consideration to the institutional framework for international cooperation in tax matters. (The draft resolution was subsequently adopted as Assembly resolution 58/230 on 23 December 2003.) A discussion followed.

114. Comments were made by a large number of members and observers, many expressing strong support for the proposal, some raising issues that needed to be addressed, some expressing various reservations, and some indicating a preference for the status quo. Support was strongest from representatives of developing countries, non-governmental organizations, civil society, professional organizations, and those with university affiliations, whereas reservations and a preference for the status quo came primarily, but not exclusively, from representatives of developed countries. Some representatives of regional and international organizations supported the proposal, and some expressed reservations to it.

115. On the following seven points, there seemed to be a consensus: (a) that the work of the Group of Experts ought to be strengthened; (b) that the developing and

[3] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

emerging countries ought to have an effective forum for expressing their views on international tax issues; (c) that any new or revised institutional arrangement ought to build on the work of the current Group of Experts; (d) that a meeting held once every two years was inadequate; (e) that any institutional arrangement should limit the membership sufficiently so that it could operate effectively; (f) that the membership should include representatives from developed, developing and transitional economy countries; and (g) that Governments should select tax officials as their representatives.

116. During the discussions, support and reservations were expressed by many participants. By the conclusion of the two sessions, there had been many more statements of support for the proposal than statements of objection.

117. No summary can capture all of the expressions of support for the proposal or of reservations to it. In many cases, participants endorsed the expressions of support or reservations of previous speakers, although they often added their own personal observations.

118. Those supporting the proposal made the following points:

(a) That the United Nations was the only international organization with the legitimacy to set universal norms relating to international taxation and that the proposed forum would give greater legitimacy to the proposals emanating from it;

(b) That the creation of a professional staff through redeployment was critical if the forum was to carry out its work effectively, especially as it had moved to deal with international tax matters outside the scope of a model tax convention;

(c) That an elevated status for the forum within the United Nations would give the forum a greater opportunity to respond promptly to the ever-changing international environment;

(d) That a commission would provide a venue from which to exert international pressure on accountancy groups to support more open disclosure of the existing “reconciliation” records of taxpayers, which showed their intercompany transfers. Disclosure of those records would greatly facilitate audits and would encourage consistent and fair treatment of taxpayers across national boundaries;

(e) That an enhanced arrangement and secretariat would make it feasible for the United Nations to participate effectively in the international and regional tax organizations, including the International Tax Dialogue, thereby providing a means for developing countries to obtain more effective assistance from the United Nations, the World Bank, the International Monetary Fund (IMF) and other international and regional tax organizations;

(f) That the need for a body with international legitimacy to address issues of international taxation was obvious and critical and was going to be fulfilled inevitably. Consequently, the real choice for this Group of Experts was whether it wished to be a part of this inevitable development.

119. Those participants objecting or having significant reservations to the proposal made the following points:

(a) That a forum in which individuals spoke as government representatives rather than in their individual capacity might not work as smoothly or effectively as the current Group of Experts;

(b) That the work of the forum might become more political and less cooperative;

(c) That the Group of Experts should make better use of its existing resources;

(d) That the Group of Experts could become more effective within its current institutional arrangements by focusing narrowly on particular problems in particular developing countries;

(e) That any change in the status quo should be postponed for consideration at a later time;

(f) That the forum might become unwieldy if it included representation from all 191 countries of the world or that, if it excluded some countries, it would fail to be representative;

(g) That some new bureaucracy was not desirable;

(h) That it was difficult to know exactly what the form and nature of such a forum might be;

(i) That the Group of Experts should maintain its current status but should organize itself so as to operate more closely with other organizations.

120. Many comments were made about strengthening the work of the forum that would be applicable without reference to the institutional framework adopted. For example, several people noted that the forum should work as efficiently as possible, and that it particularly should deal with technical and training issues that were important to developing countries. Some participants felt that the forum should address development issues unrelated to international taxation.

121. Various comments were made in response to some of the objections that had been raised about the proposal. One participant suggested that the rules that the United Nations had in place for providing fair representation on limited-membership bodies could be employed in setting the membership rules for the proposed forum. It would be possible, therefore, to have a legitimate and fairly representative commission and still keep the forum small enough to operate effectively and economically.

122. One participant suggested that the forum could establish operating procedures that retained some of the existing informality of proceedings. He noted that many international bodies with professional membership acted on a collegial basis for most of their activities. Only on certain highly sensitive issues or issues requiring a formal vote had it been necessary for members to act as government representatives.

123. In response to the objection that the forum might become political as a result of its conversion to a commission, one participant suggested that one of the reasons that her Government supported a fuller role for the United Nations on international cooperation in tax matters had been the attempts in the past by some international organizations to impose their political position on some developing countries without those countries having any voice in the formulation of the policies. She noted that a strengthening of the role of the United Nations would add legitimacy to the development of international tax norms.

124. Those participants objecting to the proposal offered responses to some of the points made in support of the proposal. One participant suggested that the elevation of the forum to commission status would not ensure that more resources would become available. It was also suggested that the forum could have influence, and had had influence, despite a lack of formal status. The United Nations Model Double Taxation Convention, for example, had had a great deal of influence, notwithstanding the ad hoc nature of the Group of Experts.

125. The Secretariat indicated that the United Nations frequently provided full opportunities for participation by observers. Observers had made valuable contributions to the forum and should continue to do so even if some new institutional arrangement was adopted.

VII. Tax treatment of cross-border interest income and capital flight: recent developments

126. A paper entitled “Tax treatment of cross-border interest income and capital flight: recent developments” (ST/SG/AC.8/2003/L.10) was presented. The presenter pointed out that there had been capital flight from developed countries to other developed countries and to offshore financial centres. Moreover, there had been capital flight from developing countries to both onshore and offshore financial centres. It was hard to obtain precise figures on the total amount of flight capital, but it was estimated to have been very substantial, perhaps in the range of several trillion United States dollars. The amount of flight capital from developing countries was difficult to determine.

127. The presenter said that he had not seen figures from authoritative sources about the total volume of capital flight. Perhaps OECD had and could provide such estimates. Also, it was necessary to exercise great care in talking about the amount of capital flight because the amount of tax evasion could be substantially less than the amount of capital flight.

128. Recently, more emphasis had been placed on international tax cooperation and the exchange of tax information in order to try to limit capital flight, and on the need to improve the tax administration in developing countries in order to try to mobilize domestic resources. First, the presenter mentioned two recent reports. The report of the High-level Panel on Financing for Development (see A/55/1000 of 26 June 2001), also known as the Zedillo report, had recommended tax information sharing (between countries) that permitted the taxation of flight capital. The Monterrey Consensus, contained in the annex to resolution 1 of chapter I of the report of the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002, had encouraged strengthening international tax cooperation.

129. Capital flight usually results from bank secrecy and confidentiality, and tax-free treatment of interest on bank deposits in major financial centres. Many of the major financial centres — whether onshore or offshore — provide such confidentiality and tax-free treatment. Governments in major financial centres, both onshore and offshore, argue that even if one country closed its doors to flight capital, the flight capital would merely go to another country’s financial centre. Therefore, each Government argues, why should that country close its door to flight capital? This emphasizes that multilateral efforts are required to confront the problem of capital flight and the resulting tax evasion.

130. The presenter indicated that there had been two recent, significant developments with respect to combating capital flight. First, EU had taken steps against capital flight. The EU Directive on the Taxation of Savings Income established the important principle that cross-border interest payments within EU to individuals resident in EU should be subject to taxation. The mechanism for such taxation is either (a) the automatic exchange of information between EU countries or (b) a withholding tax in the country where the payer of the interest is located. The EU Savings Directive, however, does not apply to interest paid from EU countries to residents of third countries. Therefore, the EU Savings Directive will have no direct impact on capital flight from residents of third countries into EU, especially capital flight into EU financial centres.

131. The second significant development was the effort by OECD and its Fiscal Committee to limit the use of tax havens and to limit capital flight from OECD countries to those tax havens. In 1998, the OECD Fiscal Committee issued a report entitled Harmful Tax Competition: An Emerging Global Issue (the 1998 OECD Report). OECD followed up on the 1998 OECD Report with additional reports and a Model Agreement on Exchange of Information on Tax Matters. However, the presenter indicated that the impact of the OECD proposals was only to limit capital flight from OECD countries to tax havens, and to limit tax evasion in the OECD countries. The presenter mentioned that in spite of the language in the OECD Reports and in spite of the statements of some OECD officers, the OECD proposals and the OECD Model Agreement on Exchange of Information on Tax Matters did not try to limit capital flight from third countries into OECD countries and into OECD financial centres.

132. The presenter questioned whether EU and OECD would confront the issue of capital flight from third countries into bank deposits in the major financial centres. Would EU and OECD take steps to implement the taxation of cross-border interest income paid directly or indirectly to residents in third countries on such flight capital?

133. The presenter asked whether this growing attention to capital flight, including the EU Savings Directive and the OECD proposals would presumably lead to greater scrutiny by third countries of the policies of the EU and the OECD to determine their even-handedness. A major issue now was how third countries would react to the emphasis of EU and OECD on the importance of the taxation of capital flight. Would third countries undertake efforts to try to stop flight of capital from third countries into the major financial centres, whether onshore or offshore? The recommendations of the Zedillo report and the recommendations of the Monterrey Consensus had been clear: there was a need for the exchange of tax information to help stop capital flight, and for international tax cooperation to assist developing countries.

134. The presenter ended his presentation by stating that it had emphasized the importance of the multilateral approach to issues related to capital flight.

135. The discussant recognized the work done by OECD and EU but pointed out that more could be done. He described the work as a “living process”. The discussant pointed out that a critical element in fighting the problem was exchange of information. The discussant acknowledged the work done by OECD as reflected in its 2001 report describing a process whereby a tax haven could obtain assistance in changing its modus operandi and cooperating in the information exchange process. The discussant also described the work done by EU as reflected in the introduction of its saving directive. However, capital flight was a problem not just for EU and OECD: the savings directive should be extended to encompass all countries. The discussant ended his comments by remarking that one could never do enough to combat capital flight.

136. The proceedings were opened to the floor. A member noted that the work done by OECD and EU had constituted steps in the right direction. Remarks by several member countries indicated that capital flight was a serious problem for developing countries as well as for developed ones. The example was cited of a high-level government official who might choose to deposit in a developed country assets taken illegally from a developing country.

137. A comment came from a participant concerning the correctness of paragraph 61 of the paper in that it had stated that "very significantly, the OECD proposal has delayed confronting directly the issue of cross-border interest payments on bank deposits and other saving instruments". He advised that OECD had confronted directly the issue of cross-border interest payments on bank deposits in its 2000 report entitled *Improving Access to Bank Information for Tax Purposes* and in its subsequent work described in *The 2003 Progress Report: Improving Access to Bank Information for Tax Purposes*. The participant said OECD was continuing its work regarding tax evasion. He also characterized the work of OECD as having a beneficial "spillover" effect upon which other countries could draw. The presenter noted that his paper was dated July 2003 and had preceded the 2003 OECD Progress Report.

138. A member made a comment not directly related to the paper presented but related to the topic. She indicated that her country did not automatically provide information to its treaty partners but certainly did so when requested.

139. Another member voiced his concern with respect to money-laundering and noted that in order to be accepted in the international community, a country needed to act against money-laundering and must participate in information exchange.

140. Another member from a developed country offered his personal experience regarding automatic information exchange. Having participated in these exchanges, he said that they had entailed gathering a vast amount of information and were administratively burdensome. He also noted that automatic information exchange was only one of several tools to be used by tax administrators. His personal view was that the increase in the rate of compliance in his country had been not only to better information-gathering but also to greater faith in the system.

141. The Chairman commented that once information has been acquired by the taxing authorities, it became exchangeable.

142. Another country stated that often the information alone was not enough: technical assistance was also needed.

143. One member stated — and others agreed — that capital flight was a two-part issue involving (a) information exchange and (b) rate of taxation. He indicated that if a country did not tax a certain kind of income, such as portfolio income, it would be difficult if not impossible to compete with that country. One member noted that since countries use different Tax Identification Numbers (TINs), exchange of information became difficult.

144. Another member commented regarding the OECD standards and noted that there was one (less stringent) standard for OECD members and another (more stringent) standard for non-OECD members. Still another member noted the importance of confidentiality when engaging in information exchange, citing an instance where information had gone to the wrong country and had become public.

145. One participant noted that OECD, in its 2000 report on access to bank information, had expressly adopted the principle that its member countries should have access to bank information and should exchange that information with treaty partners. He recommended that the Group of Experts, at a minimum, should adopt such a principle.

VIII. Electronic commerce and developing countries

146. There were two papers for discussion. The first was entitled “Impact of electronic commerce on allocation of tax revenue between developed and developing countries” (ST/SG/AC.8/2003/L9) written by Professor Chang Hee Lee. The other was entitled “International taxation of electronic commerce” (ST/SG/AC.8/2003/CRP.9) written by Professor Reuven Avi-Yonah.

147. The major arguments in Professor Lee’s paper were the following: that the existing norms of inter-jurisdictional revenue allocation were not valid in a digital era; that tax neutrality would justify a new order that assigned more revenue to the developing countries; and that the United Nations might consider revising the United Nations Model Double Taxation Convention to the advantage of the developing countries.

148. To support his viewpoints, the author referred to four important issues:

(a) The dichotomy between capital and labour, or property and service, upon which the present international tax rules were based, was not valid in a digitalized era (paras. 18-19);

(b) Electronic commerce (e-commerce) had caused the traditional concept of permanent establishment to break down (paras. 22-24);

(c) The impact of e-commerce on service income was more devastating because in a digitalized world, service could be provided across the globe without physical contact with the location where the service was consumed (para. 25);

(d) The consumption tax was also seriously affected, because e-commerce made it impossible for the importing country to enforce its substantive right to collect tax (para. 26).

149. To solve the above problems, the paper made two specific proposals:

(a) Add a paragraph to article 7 (Business profits) that would permit a host country to impose withholding tax on all payments to a non-resident e-supplier in general or, upon the host country’s election, on a payment to a non-resident e-supplier from a domestic business that could deduct the payment;

(b) Change article 7 (4) so as to permit a host country to adopt a formula of apportionment if an e-supplier had a permanent establishment in the host country or if sales by a non-resident e-supplier exceeded a certain sum of money (para. 58).

150. While Professor Lee’s paper suggested solutions within the framework of double tax conventions, Professor Avi-Yonah’s paper suggested that e-commerce be carved out of double tax treaties. To be specific, three proposals were put forward. First, it was proposed that the permanent establishment concept be replaced with a *de minims* rule, meaning that a *de minims* amount of gross income earned through e-commerce from the importing country should be established as the threshold for withholding of tax by the importing jurisdiction. The second proposal addressed the distinction among incomes from services, royalties and sales of goods, each of which was currently taxed in a different manner. Since e-commerce rendered this distinction largely incoherent, it was proposed that for e-commerce, royalties, service income and sales income, all should be treated as active income without further distinction. Such income as a whole should be subject to the *de minims*

threshold and the withholding tax outlined in the first proposal. The third proposal was based on the observation that e-commerce made it extremely difficult to enforce transaction-based transfer pricing. Therefore, it was proposed that the matter of transfer pricing in the e-commerce context be addressed by using global profit splits on the basis of functional analysis of the related parties involved.

151. A comparison of the two papers showed that both favoured a withholding tax on the payments to non-residents if the income had been obtained through e-commerce. However, while Professor Lee's proposal remained within the tax treaty framework, Professor Avi-Yonah's proposal went beyond it.

152. The discussant stated that, in general, the problems that needed to be addressed in any sort of e-commerce taxation system involved: identifying the participants, identifying the location of the business, securing documentation and proof of the transaction, identifying specific economic characteristics of the type of e-commerce business, and collection of the taxes. Further, based on information that had come from an example extensively investigated which he had shared, the discussant said the challenges were to create a system that had agency cooperation, featured information exchange and was timely.

153. Also through the use of an example, he demonstrated that issues specific to the developing countries were the wide differential in tax systems, the amount of time consumed by the judicial process, and the revenue leakage during that time.

154. The Chair expressed concerns about the dynamics and speed of resolving those questions in the business sector.

155. One observer commented that they had looked at the problem but had come to no conclusion, primarily because of definitional issues. While there had been a history in the business community of telecommunications income, the nature of e-commerce was so different that the definitions did not fit historical models.

156. Another observer noted an example of the use of value-added taxes at the user location that had been fraught with problems, not the least of which was the issue of the sophistication of the user. He also noted that while value-added taxes might provide an answer, there was also an incentive to make decisions on permanent establishment locations on the basis of value-added tax differentials and corporate establishment decisions based on corporate income tax differentials.

157. Several points were contributed by a developed-country member. Electronic commerce added great complexity to the business model in terms of logistics, for example, timing, which could restrict growth. Most electronic commerce was between businesses (B2B) not between businesses and customers (B2C). There was uncertainty, for example, as to when, under old rules, continued sales constituted permanent establishment. The use of threshold rules in the process of considering e-commerce issues would eliminate such uncertainties.

158. An observer, citing examples from his own country, again emphasized the issue of timeliness and stated that the use of mutual assistance did not meet the timeliness needs of business and the countries involved.

159. An observer commented that the primary issue here was not B2B, but rather digital services and intangible products, that in many of the previous estimates, the impact of e-commerce, from either tax or economic perspectives, had been

overrated or absent; and that the issue might entail not the loss of the revenue of developing countries to developed countries, but rather the opposite.

160. The Secretary emphasized the Chair's comments that the dynamics of the issue, placed pressure on the existing model and necessitated that action be ex ante rather than ex post, since, by then, many of the results would have already been produced.

161. A member emphasized the points that had been made by earlier commentators, but put them in the context of their providing just one more example of the speed of business being ahead of the speed of change of tax models. In that regard, resolution of the issue perhaps needed input from the business perspective, that is to say, the input should be a business-based description of the model followed by development of the applicable law.

162. An observer contributed two comments. Making an analogy with respect to domestic taxes, the observer noted that there was substantial economic evidence to support a previous commentator's contention that the issue was not solely one of loss of revenue by developing countries to developed countries. Also, while there was an allocation element related to the issue that could be worked out by countries and legitimate businesses, the real risk of revenue losses stemmed from transfer pricing issues because of significant cost differentials, and from lack of information on illegitimate business operations.

IX. Revision and update of the United Nations Model Double Taxation Convention between Developed and Developing Countries and revision and update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

163. A paper entitled "Commentary on the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries" (ST/SG/AC.8/2003/CRP.12) was presented to the Group of Experts. The presenter noted that the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (2003 version)[4] had been initially adopted in 1979 and was the most recent version of the guide designed to accompany the United Nations Model Double Taxation Convention. He noted that at the tenth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters the draft Manual had been examined and several revisions were made and accepted (see E/2002/6, sect. II).

164. At its tenth meeting, the Group of Experts had decided that because the Manual was of great importance to developing countries and transitional economy countries, the revision of the Manual should be one of its ongoing activities.

165. The presenter made several comments regarding the Manual, suggesting that consideration should be given to adding a glossary. The Manual should contain a designation as to the date of its last revision or, alternatively, a version number. When examples were given to illustrate a particular point, they should be displayed in indented format to draw the reader's attention to them and to separate them from textual material. Consideration should be given to publishing the Manual on the World Wide Web with embedded links (hyperlinks) to background material, tax treaties, references, etc. Consideration should be given to adding a section that would contain additional resources for the tax administrator including references to other resources upon which the administrator or negotiator might draw. The Manual should contain more examples and perhaps more detail on critical aspects of treaty negotiation along with actual case studies. The use of "outcome assessments" should be considered for the purpose of obtaining feedback and suggestions from those who used the Manual.

166. **Comments on part one**. The presenter noted that the introduction was too complex: consideration should be given to shortening it or eliminating it altogether. The "Historical overview" discussion (paras. 51-70) were too detailed and went too far back. The long discussions in the footnotes (encompassing paras. 72-76) should be reduced in length. He suggested that the material on the history of tax evasion be eliminated.

167. **Comments on part two**. The part of the Manual on the "United Nations Model Double Taxation Convention" raised significant problems of interpretation. A reader could confuse "Observations" with "Commentary" in respect of significance. At a minimum, the Manual should make it clear that its only purpose was educational and instructive and that it did not have the same status as the official

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

Commentary in terms of interpreting the United Nations Model Double Taxation Convention.

168. The presenter suggested that, to avoid confusion and misinterpretation, it might be better to delete the part of the Manual on the United Nations Model Double Taxation Convention and ask the reader to read (refer to) the official Convention and Commentary.

169. Additionally, there was a danger that, as the United Nations Model Double Taxation Convention was revised and updated, the changes would not be reflected in the Manual, thus causing the Manual to retain erroneous and outdated articles and observations.

170. **Comments on part three**. As addenda to a training Manual, the annexes were not all helpful or necessary; the presenter therefore suggested limiting the number of annexes.

171. **Suggested additional topics**. Additional topics were suggested such as capital flight, anti-avoidance principles such as economic substance, business purpose, economic benefit, abuse of law, assignment of income, anti-deferral regimes like controlled foreign company legislation, taxation of passive investment held in foreign entities, foreign trust regimes, and anti-tax haven regimes and other anti-avoidance legislation.

172. The topic of cybercrimes was also suggested for inclusion. The Manual could address, or alert the negotiator to, the correct method of gathering and preserving evidence of criminal activity and gathering and preserving electronic evidence. The Manual could address taxation of online commerce, including e-commerce contracts, exchange of electronic keys, digital signatures, impound accounts, cross-border transactions, banking and payment mechanisms, international e-commerce taxation, online financial services, and money-laundering.

173. The Manual could familiarize the reader with the basic concepts and themes of intellectual property law in both national and international arenas.

174. The discussion was opened to the floor. The Chairman noted that, to his mind, a manual was a document that would be used to facilitate negotiation, in this case, of a treaty. He gave an example of an automobile manual and its relationship to operation and ownership. He noted the redundancy of the Manual when compared with the Model Double Taxation Convention. He stated that the Convention and the Commentary had authority but that the Manual observations had no authority and should stand alone.

175. An adviser pointed out that the Manual had been published in 1979 and preceded the Convention by one year. This explained the redundancy found in the two documents. The adviser indicated that if the Manual was to be revised, its revision would require a highly collaborative effort. This view was echoed by several members.

176. The member then discussed the effort necessary to draft a more appropriate document. Several participants suggested that in order to make the document useful to a treaty negotiator, “input” from treaty negotiators on the reasons for taking positions on various articles would be beneficial. One member indicated such input could be obtained in a series of conference calls.

177. Several members noted that while the revision of the Manual was important, there were more pressing needs.

178. Many members from developing countries expressed the view that a useful document would be beneficial to them, a view echoed by several developed countries. Those in favour of a revised Manual noted that some of the topics highlighted by the presenter would be useful to treaty negotiators. Practical advice on treaty abuse and anti-avoidance would be helpful.

179. There was a consensus that the current Manual should not be published. The Secretary advised that a scaled-down version should be produced in a more practical and useful format.

180. A proposal on the update of the Commentaries on article 1 of the United Nations Model Double Taxation Convention was presented at the meeting (ST/SG/AC.8/2003/CRP.11/Add.1). The proposal was complementary to the presentation and discussion undertaken on the subject of treaty shopping and treaty abuses.

181. The proposal was based on the following assumptions: The update of the Commentaries on article 1 of the United Nations Model Double Taxation Convention should take into account, as a point of departure, the update undertaken by OECD in 2003 to the Commentaries on article 1 of the OECD Model Tax Convention. Nevertheless, it was stressed that it was impossible to automatically adopt and transfer all the amendments made by OECD to its Model Tax Convention, since there had been little discussion on certain issues at the meeting of the Group of Experts. For that reason, it was suggested not to incorporate in the Commentaries on article 1 of the United Nations Model Double Taxation Convention, paragraph 20 of the Commentaries on article 1 of the OECD Model Tax Convention dealing with a “limitation of benefits” clause, or other paragraphs dealing with the incorporation of specific clauses to curb inappropriate use of double tax conventions through integration with some domestic preferential tax regimes of the other contracting State (paras. 21.1, 21.3 and 21.4 of the new Commentaries on article 1 of the OECD Model Tax Convention), or the amendments made to paragraph 23 in relation to the acceptance of controlled foreign corporations (CFC) legislation under double taxation conventions.

182. Nevertheless, it was stressed that only the amendments of the Commentaries on article 1 of the OECD Model Tax Convention should be taken into account, and not others, such as those dealing with the meaning of the “beneficial owner” clause in articles 10, 11 and 12 of the United Nations Model Double Taxation Convention, taking into account the limited scope of the discussion.

183. It was stressed that the main amendment made by the Commentaries on article 1 should be applied to the United Nations Double Taxation Convention in order to clarify the relationship between double taxation conventions and the application of domestic anti-abuse tax provisions. Cases were reported where domestic anti-abuse tax provisions had been applied to counteract abuse of double taxation conventions. It was stressed that the general view of the majority of States was that the application of domestic anti-abuse tax provisions to counteract abuses of double taxation conventions should be allowed and therefore that paragraphs 9.1 to 9.6 of the OECD Model Tax Convention should be incorporated in the Commentaries on the articles of the United Nations Model Double Taxation Convention.

184. Nevertheless, it was considered that the content of paragraph 9.5 of the Commentaries on article 1 of the OECD Model Tax Convention should be discussed by the members of the Group of Experts in order to determine the common requirements in respect of abuse to be followed by all countries when applying a double taxation convention.

185. This consideration was completed by an express reference to the primacy of the Vienna Convention on the Law of Treaties, which was to be respected in any case with regard to the application of domestic anti-abuse rules.

186. The importance was also stressed of the inclusion of a specific safeguard clause in double taxation conventions that would enhance the application of domestic anti-abuse provisions, preserving their non-application as a consequence of the primacy of international conventions. A member of a developed country confirmed that this was in conformity with its particular policy when signing double taxation conventions.

187. A debate followed. The majority of the members and observers stressed that the amendment of the Commentaries on article 1 deserved further attention and a final decision should not be made until the next meeting of the Group of Experts. An observer from a developed country expressed her concern about the need to revise the amendments taken from the OECD Model Tax Convention Commentaries in order to preserve an equilibrium among the positions of differing countries. It was decided to continue with the process of discussing the different approaches through electronic means in order to enable the formulation of a consensus on the elaboration of the Commentaries, to be discussed in the next meeting of the Group of Experts.

X. Conclusion

188. For the preparation of the twelfth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters, the Group of Experts suggested the following issues:

1. ***Earnings stripping***. Issues of earnings stripping (reducing taxable profits from inappropriate deductions) through excessive changes for services, interest, technical fees, and the like, and the possible responses. The discussion of responses would include domestic legislation and any changes in treaty language that might be needed to enable such domestic legislation. In preparation for the discussion, it might be possible to obtain:

(a) Reports of participants from the United States, the United Kingdom and other developed countries on their legislation dealing with stripping schemes;

(b) Reports on experiences of developing countries.

2. ***Modified definition of "permanent establishment"***. The current definition of "permanent establishment" has proved difficult for many developing countries, particularly the requirement of a "fixed" location and the use of multiple permanent establishments for related business activities. OECD has begun a re-examination of the permanent establishment concept as a result of its work on e-commerce. The United Nations might wish to examine whether the United Nations Model Double Taxation Convention should be modified in various ways to deal with the practical problems that have resulted from the current definition.

3. ***Treaty shopping***. Whether the United Nations should recommend an article on the limitation of benefits that would be responsive to the needs of developing countries. In particular, many developing countries have difficulty negotiating treaties with some developed countries because the major taxpayers in those countries are able to obtain the benefits of a treaty by using the treaty negotiated with another country. Perhaps the limitations-on-benefits article in the Chile/New Zealand convention could serve as a starting point in developing a model article.

4. ***Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries***. Reformulation of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries to be used as a glossary for reference, encompassing use in international taxation, the United Nations Model Double Taxation Convention, tax treaties negotiations and training.

5. ***United Nations Model Double Taxation Convention between Developed and Developing Countries***. Revision of articles 1 (Persons covered), 5 (Permanent establishment), 26 (Exchange of information) and 27 (Assistance in the collection of taxes).

189. At the closing of the eleventh meeting, many participants emphasized the importance of the work of the Group of Experts to their countries and, particularly, the importance of the agenda covering the eleventh meeting. They emphasized that the enlargement of the Group of Experts to include additional participants had been

a useful development since international taxation was also relevant to their tax authorities. Other participants considered that the Group of Experts should cover more efficiently the subjects in the agenda, that the number of items covered should be more limited and that there should be more frequent meetings. The Group of Experts considered that the United Nations should take this into account, especially in light of current aspects of financing for development and other relevant considerations. The meeting closed with statements by participants on the importance of the work accomplished and the contribution of the Secretariat. Both the Chairperson and the Secretary of the Group of Experts recognized the need for further streamlining of the Group of Experts and acknowledged their support for taking into consideration the participants' recommendations.

Annex I

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Annex II

Agenda and organization of work

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Mutual assistance in collection of debts and protocol for the mutual assistance procedure.
4. Treaty shopping and treaty abuses.
5. Interaction of tax, trade and investment.
6. Financial taxation and equity market development.
7. Transfer pricing:
   (a) Simplified safe harbour procedures;
   (b) Intermediation and arbitration: European Union experience.
8. Tax treatment of cross-border interest income and capital flight: recent developments.
9. Electronic commerce and developing countries.
10. Institutional framework for strengthening international tax cooperation.
11. Revision and update of the United Nations Model Double Taxation Convention between Developed and Developing Countries.
12. Revision and update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

Annotations

3. Mutual assistance in collection of debts and protocol for the mutual assistance procedure

The fact that jurisdiction to deal with both the substantive and procedural aspects of tax collection may involve different arrangements regarding the status of private parties vis-à-vis the faculties, powers, duties and privileges of the tax administration in each State, suggests the need for individual responses tailored to the structure and administration of the particular State in question. The eleventh meeting should address the issue of mutual assistance in tax collection, which is not dealt with in article 26 of the United Nations Model Double Taxation Convention concerning exchange of information. The subject of a new international instrument for promoting international assistance in tax collection in the form of a multilateral convention on mutual administrative assistance in tax matters should be explored during the eleventh meeting.

Documentation

Mutual assistance in collection of tax debts and protocol for the mutual assistance procedure (ST/SG/AC.8/2003/L.2)

4. Treaty shopping and treaty abuses

Treaty shopping exists when a resident person of a particular State takes steps or actions to establish a link for himself or his activities to another State with the intention of obtaining entitlement to benefits or relief under the law and treaties that the other country is party to. Tax authorities may challenge treaty shopping situations if an entity or transaction is deemed to lack sufficient economic substance. The eleventh meeting should explore guidelines that might include restrictions on the reliefs provided by a contracting State so that they should be given only:

(a) To persons subject to tax in the other country, or

(b) To persons subject to tax in the other country at a minimum statutory or effective rate, or

(c) To the beneficial owners of the income concerned, or

(d) (In appropriate cases where the beneficiary is, in the first instance, a corporation), to companies the shares in which are quoted on a recognized stock exchange or to companies the major shareholding in which is not in the hands of persons resident in another country.

Arrangements for the exchange of information should, where appropriate, enable information to be provided that may be needed to operate such provisions.

Documentation

Abuse of tax treaties and treaty shopping (ST/SG/AC.8/2003/L.3)

5. Interaction of tax, trade and investment

Recent developments in the World Trade Organization, including the adoption of the General Agreement on Trade in Services, the Agreement on Trade-related Aspects of Intellectual Property Rights and the Subsidies Code in the Uruguay Round of multilateral trade negotiations, and the Foreign Sales Corporation/Extraterritorial Income Exclusion litigation, have highlighted the interaction among tax, trade and investment rules. The World Trade Organization is no longer solely concerned with tariff reduction at the border, but engaged with issues related to foreign direct investment (for example, the General Agreement on Trade in Services) and to direct taxation (for example, the Subsidies Code as applied to direct tax export subsidies and the border adjustability rules). The meeting will discuss the theoretical relationship among tax, trade and investment rules, including the bilateral tax and investment treaties and the multilateral framework for addressing these issues.

Documentation

The interaction of tax, trade and investment (ST/SG/AC.8/2003/L.4)

6. Financial taxation and equity market development

The Monterrey Consensus of the International Conference on Financing for Development addressed the need to sustain stable private financial flows to developing countries and economies in transition by encouraging the orderly development of capital markets through debt and equity markets that encourage and channel savings and foster productive investments. Derivative instruments play an important role in hedging investments in capital markets as well as providing transactional efficiency in financial markets. Owing to their rapid development, prevailing tax rules have not adjusted to the tax problems presented by derivatives. During the tenth meeting, there was no consensus on the question of appropriate jurisdiction, entailing the issue of whether to use the residence basis and that of the practicability of withholding taxes at source on payments under derivatives. Derivative transactions often exploit thin margins between prices available in different markets. The eleventh meeting should ensure that derivative transactions do not inappropriately avoid withholdings and other taxes.

Documentation

Financial taxation and equity market development: optimal financial market tax policies for developing countries (ST/SG/AC.8/2003/L.5)

7. Transfer pricing

(a) Simplified safe harbour procedures

During the tenth meeting, the Group of Experts recognized that the developing countries and economies in transition should improve their ability to develop and implement transfer pricing rules. The Focus Group appointed in regard to this has made recommendations specifically on policy advice, technical assistance and international cooperation on transfer pricing issues, and on avoiding and resolving transfer pricing disputes. The eleventh meeting should develop relevant systems and procedures to deal with transfer pricing. In this connection, the experience of the

European Union (EU) and a comparative analysis with Organization for Economic Cooperation and Development (OECD) procedures will be of particular relevance.

(b) Intermediation and arbitration: European Union experience

The eleventh meeting should examine the feasibility of arbitration as a means of resolving international tax disputes. Most conventions provide for a mutual procedure as a means of resolving disputes concerning the application of the convention to taxpayers. It entails discussions between the competent authorities of the signatory States. The European model and a comparative analysis involving the OECD model should be of particular relevance. The recommendation should be based on the Monterrey Consensus of the International Conference on Financing for Development.

Documentation

Transfer pricing: simplified safe harbour procedures (ST/SG/AC.8/2003/L.7)

Intermediation and arbitration: the Arbitration Convention of the European Union for the resolution of transfer pricing disputes (ST/SG/AC.8/2003/L.8)

8. Tax treatment of cross-border interest income and capital flight: recent developments

The tax treatment of cross-border interest income continues to be a major issue in international taxation and in international finance. Recent developments will result in more extensive taxation of cross-border interest income, and consequently less capital flight and tax evasion. With the growing attention to capital flight, the EU Directive on the Taxation of Savings Income and the OECD proposals will presumably lead to greater scrutiny by third countries of the even-handedness of the policies of EU and OECD. Both the EU Savings Directive and the OECD proposals in effect do not confront the issue of capital flight from third countries into EU and OECD countries. Given that EU and OECD have emphasized the importance of the taxation of capital flight, the reaction of third countries needs to be analysed.

Documentation

Tax treatment of cross-border interest income and capital flight: recent developments (ST/SG/AC.8/2003/L.10)

9. Electronic commerce and developing countries

During the discussion in the tenth meeting, it was suggested that the United Nations might undertake research and new initiatives for determining the principles for taxation of electronic commerce and, specifically, concepts of permanent establishment, which may be useful to developing countries and economies in transition. The eleventh meeting should develop guidelines for legislation promoting direct and indirect tax requirements based on the strengthening of the tax base so as to avert preferential treatment of any specific use of electronic commerce, as well as on principles of transparency, certainty, effectiveness, efficiency and non-discrimination.

Documentation

Impact of electronic commerce on allocation of tax revenue between developed and developing countries (ST/SG/AC.8/2003/L.9)

10. Institutional framework for strengthening international tax cooperation

During the preparatory phase of the International Conference on Financing for Development, the High-level Panel on Financing for Development headed by former Mexican President Ernesto Zedillo formulated recommendations aimed at the establishment of an institutional framework for an international organization or forum for international cooperation in tax matters. The Zedillo Panel specifically endorsed the creation of an international tax organization to cover such issues related to taxation as developing procedures for arbitration, sharing information on tax evasion, compiling statistics, and engaging in surveillance.

In the same context, in his report to the General Assembly at its fifty-eighth session on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216), the Secretary-General recommended that the Ad Hoc Group of Experts on International Cooperation in Tax Matters be upgraded to an intergovernmental commission or committee, reporting directly to the Economic and Social Council (para. 167 of the report of the Secretary-General).

Documentation

Institutional framework for international tax cooperation (ST/SG/AC.8/2003/L.6)

Report of the Secretary-General on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216)

Do we need an international tax organization? (ST/SG/AC.8/2003/CRP.6)

Report on a conference held at Pocantico on feasible additional sources of finance for development (ST/SG/AC.8/2003/CRP.6/Add.1)

11. Revision and update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

During its ninth and tenth meetings, the Group of Experts had agreed to proceed with periodic revisions and updates of the United Nations Model Double Taxation Convention every year. Furthermore, at its tenth meeting, the Group of Experts appointed two Focus Groups to make recommendations on transfer pricing and taxation of electronic commerce. The Group of Experts recognized the need for developing and transitional economy countries to improve their ability to develop, implement and administer transfer pricing and taxation on electronic commerce.

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

During its ninth and tenth meetings, the Group of Experts agreed to proceed with periodic revisions and updates of the Manual every year.

Annex III

List of documents

ST/SG/AC.8/2003/L.1	Provisional agenda and organization of work
ST/SG/AC.8/2003/L.2	Mutual assistance in collection of tax debts and protocol for mutual assistance procedure (by Professor Bruce Zagaris)
ST/SG/AC.8/2003/L.3	Abuse of tax treaties and treaty shopping (by Professor Francisco Garcia Prats)
ST/SG/AC.8/2003/L.4	The interaction of tax, trade and investment (by Professor Reuven Avi-Yonah)
ST/SG/AC.8/2003/L.5	Financial taxation and equity market develop.m.ent: financial market tax policies for developing countries (by Mr. David Sugarman)
ST/SG/AC.8/2003/L.6	Institutional framework for international tax cooperation (by Professor Michael McIntyre, Mr. Antonio Figueroa and others)
ST/SG/AC.8/2003/L.8	Intermediation and arbitration: the Arbitration Convention of the European Union for the resolution of transfer pricing disputes (by Mr. Juan Lopez Rodriguez)
ST/SG/AC.8/2003/L.9	Impact of electronic commerce on allocation of tax revenue between developed and developing countries (by Professor Chang Hee Lee)
ST/SG/AC.8/2003/L.10	Tax treatment of cross-border interest income and capital flight: recent develop.m.ents (by Mr. David Spencer)
ST/SG/AC.8/2003/L.11	Report of proceedings 15 December 2003
ST/SG/AC.8/2003/L.11/Add.1	Report of proceedings 16 December 2003
ST/SG/AC.8/2003/L.11/Add.2	Report of proceedings 17 December 2003
ST/SG/AC.8/2003/L.11/Add.3	Report of proceedings 17 and 18 December 2003
ST/SG/AC.8/2003/L.11/Add.4	Report of proceedings 18 December 2003
ST/SG/AC.8/2003/L.11/Add.5	Report of proceedings 19 December 2003
E/2002/6	Tenth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters: report of the Secretary-General
A/58/216	Implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Develop.m.ent: report of the Secretary-General

ST/ESA/PAD/SER.E/37	*Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (available in English only)
ST/ESA/PAD/SER.E/21	*United Nations Model Double Taxation Convention between Developed and Developing Countries* (United Nations publication, Sales No. E.01.XVI.2)
ST/SG/AC.8/2003/INF.1	List of documentation
ST/SG/AC.8/2003/INF.2	List of participants
ST/SG/AC.8/2003/INF.3	Programme of work
ST/SG/AC.8/2003/CRP.2	L'assistance internationale au recouvrement des créances fiscales (by Mr. Noureddine Bensouda)
ST/SG/AC.8/2003/CRP.2/Add.1	Draft article 27, Assistance in the collection of taxes
ST/SG/AC.8/2003/CRP.4	Globalization, tax competition: implication for developing countries (by Professor Reuven Avi-Yonah)
ST/SG/AC.8/2003/CRP.5	Economic, equity market, and trade implications of and interactions with taxation in a multinational setting (by Professor Stephen Crow)
ST/SG/AC.8/2003/CRP.6	Do we need an international tax organization? (by Frances M. Horner)
ST/SG/AC.8/2003/CRP.6/Add.1	Report on a conference held at Pocantico on feasible additional sources of finance for develop.m.ent
ST/SG/AC.8/2003/CRP.6/Add.2	Report on the panel discussion on international cooperation in tax matters
ST/SG/AC.8/2003/CRP.6/Add.3	Institutional framework for strengthening international tax cooperation (by the Commonwealth Secretariat)
ST/SG/AC.8/2003/CRP.7	The unitary method and the less developed countries: preliminary thoughts (by Professor Oliver Oldman and Jennifer J. S. Brooks)
ST/SG/AC.8/2003/CRP.7/Add.1	The comparable profits methods and the arm's length principle (by Professor Hubert Hamaeckers)
ST/SG/AC.8/2003/CRP.7/Add.2	Transfer pricing: experience of Pakistan (by Mr. Riaz Ahmad Malik)
ST/SG/AC.8/2003/CRP.9	International taxation of electronic commerce (by Professor Reuven Avi-Yonah)

ST/SG/AC.8/2003/CRP.9/Add.1	Electronic commerce and developing countries (by Professor Ghislain T. J. Joseph)
ST/SG/AC.8/2003/CRP.11	Doble Tributación Internacional: inmovilismo o adecuación a la nueva realidad mundial (by Mr. Antonio Hugo Figueroa)
ST/SG/AC.8/2003/CRP.11/Add.1	Proposal of update of the Commentaries on article 1 of the United Nations Model Double Taxation Convention between Developed and Developing Countries (by Professor Francisco Alfredo Garcia Prats)
ST/SG/AC.8/2003/CRP.12	Commentary on the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (by Professor Frank L. Brunetti)

Annex IV

Work programme

Monday, 15 December 2003

9 a.m.-10 a.m.		Registration of participants
10 a.m.-10.30 a.m.		Opening of the meeting by Mr. Abdel Hamid Bouab
	Item 1.	Election of officers
	Item 2.	Adoption of the agenda and organization of work
10.30 a.m.-11.15 a.m.	Item 3.	Mutual assistance in collection of debts and protocol for the mutual assistance procedure (L.2, CRP.2)*
		– Presenter: Mr. Andrew Dawson
		– Discussant: Mr. Noureddine Bensouda
		Discussion open to experts
		Discussion open to observers
11.15 a.m.-11.30 a.m.		Coffee break
11.30 a.m.-12.30 p.m.	Item 3.	Consideration of item continued
12.30 p.m.-2.30 p.m.		Lunch break
2.30 p.m.-3 p.m.	Item 3.	Consideration of item continued
3 p.m.-4.15 p.m.	Item 4.	Treaty shopping and treaty abuses (L.3)*
		– Presenter: Professor Francisco Alfredo Garcia Prats
		– Discussant: Mr. Antonio Hugo Figueroa
		Discussion open to experts
		Discussion open to observers
4.15 p.m.-4.30 p.m.		Coffee break
4.30 p.m.-5.30 p.m.	Item 4.	Consideration of item continued

* “L” refers to working documents and “CRP” to conference room papers. Document symbols, which can be found at the top right corner of each document, begin with “ST/SG/AC.8/2003”.

Tuesday, 16 December 2003

9.30 a.m.-10 a.m.		Report of the Rapporteur
10 a.m.-11 a.m.	Item 5.	Interaction of tax, trade and investment (L.4, CRP.4)*
		– Presenter: Mr. Jon E. Bischel
		– Discussant: Professor John Evans Atta Mills
		Discussion open to experts
		Discussion open to observers
11 a.m.-11.15 a.m.		Coffee break
11.15 a.m.-12.30 p.m.	Item 5.	Consideration of item continued
12.30 p.m.-2.30 p.m.		Lunch break
2.30 p.m.-4 p.m.	Item 6.	Financial taxation and equity market development (L.5, CRP.5)*
		– Presenter: Professor Stephen Crow
		– Discussant: Mr. Armando L. Yaffar
		Discussion open to experts
		Discussion open to observers
4 p.m.-4.15 p.m.		Coffee break
4.15 p.m.-5.30 p.m.	Item 6.	Consideration of item continued

Wednesday, 17 December 2003

9.30 a.m.-10 a.m.		Report of the Rapporteur
10 a.m.-11 a.m.	Item 7.	Transfer pricing
		(a) Simplified safe harbour procedures (CRP.7, CRP.7/Add.1, CRP.7/Add.2)*
		– Presenter: Mr. Riaz Ahmad Malik
		– Discussant: Mrs. Liselott Kana
		Discussion open to experts
		Discussion open to observers
11 a.m.-11.15 a.m.		Coffee break

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11.15 a.m.-12.30 p.m.	Item 7.	Consideration of item continued
12.30 p.m.-2.30 p.m.		Lunch break
2.30 p.m.-4 p.m.	Item 10.	Institutional framework for strengthening international tax cooperation (L.6, CRP.6, CRP.6/Add.1, CRP.6/Add.2)*
		– Presenter: Professor Michael J. McIntyre
		– Discussant: Mr. Abdoulaye Camara
		Discussion open to experts
		Discussion open to observers
4 p.m.-4.15 p.m.		Coffee break
4.15 p.m.-5.30 p.m.	Item 10.	Consideration of item continued

Thursday, 18 December 2003

2.30 p.m.-4 p.m.	Item 8.	Tax treatment of cross border interest income and capital flight: recent developments (L.10)*
		– Presenter: Mr. David Spencer
		– Discussant: Mr. José Antonio Bustos
		Open discussion to experts
		Open discussion to observers
4 p.m.-4.15 p.m.		Coffee break
4.15 p.m.-5.30 p.m.	Item 7.	Transfer pricing
		(b) Intermediation and Arbitration: European Union experience (L.8)*
		– Presenter: Mr. Pascal Saint-Amans
		– Discussant: Mr. Errol Hudson
		Discussion open to experts
		Discussion open to observers

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Friday, 19 December 2003

9.30 a.m.-10 a.m.		Report of the Rapporteur
10 a.m.-11 a.m.	Item 9.	Electronic commerce and developing countries (L.9, CRP.9, CRP.9/Add.1)*
		– Presenter: Mr. Liao Tizhong
		– Discussant: Mr. P. L. Singh
		Discussion open to experts
		Discussion open to observers
11 a.m.-11.15 a.m.		Coffee break
11.15 a.m.-12.30 p.m.	Item 9.	Consideration of item continued
12.30 p.m.-2.30 p.m.		Lunch break
2.30 p.m.-4 p.m.	Items 11 and 12	Revision and update of the United Nations Model Double Taxation Convention between Developed and Developing Countries and of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries
		– Presenter: Mr. Antonio Hugo Figueroa (CRP.11, CRP.11/Add.1, CRP.12)*
		– Discussants: Professor Frank L. Brunetti, Professor Francisco Alfredo Garcia Prats
4 p.m.-5.30 p.m.		Adoption of the report of the eleventh meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters
		Closure of the eleventh meeting

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Annex V

Press release

Information Service

United Nations Office at Geneva

M/03/27
19 December 2003

Ad Hoc Group of Experts on International Cooperation in Tax Matters concludes eleventh meeting

The Ad Hoc Group of Experts on International Cooperation in Tax Matters held its eleventh meeting in Geneva from 15 to 19 December 2003. The meeting was attended by over 110 tax experts and administrators from several developed and developing countries, economies in transition and international financial and professional organizations.

During the meeting, the Ad Hoc Group of Experts considered the following agenda items: mutual assistance in collection of debts and protocol for the mutual assistance procedure; treaty shopping and treaty abuses; interaction of tax, trade and investment; financial taxation and equity market development; transfer pricing; simplified safe harbour procedures; intermediation and arbitration: European Union experience; tax treatment of cross-border interest income and capital flights; electronic commerce and developing countries; institutional framework for strengthening international tax cooperation; revision and update of the UN 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.

The meeting reached consensus on several international taxation issues and formulated recommendations on each of the above-mentioned items. It also provided views on the establishment of a United Nations fiscal committee to be considered by the Economic and Social Council at its next substantive session.

The twelfth meeting of the Ad Hoc Group of Experts will take place in Geneva in 2005 preceded by the meeting of the Steering Committee and the Third Interregional Training Workshop on International Taxation to be held in 2004.

The Ad Hoc Group of Experts on International Cooperation in Tax Matters, which had been previously named the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries, was established in 1968 pursuant to Economic and Social Council resolution 1273 (XLIII) of 4 August 1967 and with a view to “exploring … ways and means for facilitating the conclusion of tax treaties between developed and developing countries, including the formulation … of

possible guidelines and techniques for use in such tax treaties that would be acceptable to both groups of countries and would fully safeguard their respective revenue interests”.

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