



# Economic and Social Council

Distr.: General  
17 August 2011

Original: English

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## Committee of Experts on International Cooperation in Tax Matters

### Seventh session

Geneva, 24-28 October 2011

Item 5 (a) of the provisional agenda

**United Nations Model Tax Convention update**

### **Ad hoc expert group meeting on the 2011 update of the United Nations Model Tax Convention**

#### **Note by the Secretariat\***

The report annexed to the present note was prepared by the Secretariat as a record of an ad hoc expert group meeting held in New York on 9 and 10 June 2011. The meeting was designed to assist the United Nations Committee of Experts on International Cooperation in Tax Matters and its Subcommittee on the United Nations Model Tax Convention Update in their work of updating the United Nations Model Tax Convention. Materials relating to the meeting are available from [www.un.org/esa/ffd/tax/2011EGM/index.htm](http://www.un.org/esa/ffd/tax/2011EGM/index.htm).

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\* The views expressed in the present note do not necessarily represent those of the United Nations Committee of Experts on International Cooperation in Tax Matters. The Secretariat is responsible for any errors and omissions in the note.



## Annex

### **Report on an ad hoc expert group meeting on the 2011 update of the United Nations Model Tax Convention**

1. On 9 and 10 June 2011, the Financing for Development Office of the Department of Economic and Social Affairs of the Secretariat held an ad hoc expert group meeting on the 2011 update of the United Nations Model Double Taxation Convention between Developed and Developing Countries (United Nations Model Tax Convention). The purpose of the meeting was to bring together members of the Committee of Experts on International Cooperation in Tax Matters and other experts with special knowledge about international taxation and tax treaties to consider issues for the 2011 update of the United Nations Model Tax Convention and to assist the Committee and its Subcommittee on the United Nations Model Tax Convention Update in completing that work. Twenty experts participated, including representatives from government, business and academia. Representatives from non-governmental organizations were also invited but were unable to participate.

2. The present report reflects the main outcomes of the meeting. The technical outcomes of the meeting are being compiled in a separate report indicating possible changes to the United Nations Model Tax Convention that would improve its responsiveness and effectiveness and that could be achieved as part of the 2011 update, as noted below. That report (E/C.18/2011/CRP.1) will be submitted to the Committee for its consideration at its seventh session, to be held in Geneva from 24 to 28 October 2011. It will be available from [www.un.org/esa/ffd/tax](http://www.un.org/esa/ffd/tax) prior to the seventh session.

3. The update of the United Nations Model Tax Convention that will be done in 2011 will be the first since the 1999 revision (published in 2001) and should set the scene for more frequent updates in the future. The agenda of the meeting included presentations on all the articles of the United Nations Model Tax Convention. The discussions, however, concentrated on those changes to the United Nations Model Tax Convention that were considered achievable in 2011. Participants in the meeting recognized the need to look into other issues (e.g. reviewing the provisions on royalties in general) but noted that, due to time constraints, it would not be possible to do so during the 2011 update. The recommendations made at the meeting will be closely reviewed by the Subcommittee in presenting proposed changes to the Committee at its seventh session.

4. The meeting was chaired by Armando Lara Yaffar, Chair of the Committee. In their introduction to the meeting, Brian Arnold and David Rosenbloom shared their reflections on the current update of the United Nations Model Tax Convention. On future updates, Mr. Arnold referred to the introduction to the United Nations Model Tax Convention, according to which the Model Convention shall be continuously reviewed and updated. He concluded that intervals of 10 years are not sufficiently frequent. That conclusion was endorsed by several participants in the meeting. Mr. Arnold then stressed that, due to limited resources within the United Nations, future updates should not be carried out on a comprehensive basis but instead be focused on certain articles or issues, and that the Committee should prioritize those areas where the United Nations Model Tax Convention differs significantly from the Model Tax Convention on Income and on Capital of the Organization for Economic Cooperation and Development (OECD). Other participants supported that approach.

With regard to the process of updating the United Nations Model Tax Convention, Mr. Arnold recognized the high level of transparency within the United Nations but also emphasized the need to maximize input from stakeholders in tax systems generally.

5. Mr. Arnold stressed the need to have mechanisms for registering countries' dissenting views on interpretations of the United Nations Model Tax Convention and suggested that the Committee review the possibility of establishing such a mechanism. That general issue was also raised by other participants. Mr. Arnold advised that the commentaries to the Model Convention be written in a more user-friendly style. That would mean, for example, dealing with basic issues that the commentaries just assumed knowledge of and including more examples.

6. Mr. Rosenbloom shared his views on what a tax treaty does and explained that, for him, one of the most important functions of a tax treaty was to establish the mutual agreement procedure and provide Governments with exchange-of-information provisions. He suggested that the United Nations consider preparing an alternative "short-form" treaty that would focus only on the really important matters. In his view, such a document could be very helpful to developing countries, since they had limited resources and the costs of treaty negotiation were high.

7. Roy Rohatgi commented that the United Nations Model Tax Convention was effectively a model for development and that this purpose was critical. Mr. Rohatgi suggested that the United Nations Model Tax Convention have its title changed to the "United Nations Model Double Taxation Convention for Development", to reflect the role ascribed to it in the introduction to the Model Convention and the fact that it was grounded in the financing-for-development process. The participants in the meeting briefly discussed the topic and several participants opposed such a change. No clear recommendation came out of the discussion, although several participants favoured the short form "United Nations Model Double Taxation Convention".

8. During the meeting several other general issues relevant to the 2011 update were discussed, each of which was introduced by a Committee member. On the issue of the potential inclusion of country observations and reservations, it was agreed that a background paper on the inclusion of developing country positions in the United Nations Model Tax Convention or (at least for the 2011 update) in a separate document, would be prepared by the Secretariat for the seventh session of the Committee.<sup>1</sup> It was suggested that the collection of such positions should not be allowed to hold up completion of the 2011 update.

9. The participants in the meeting discussed appropriate ways of presenting citations from the commentary to the OECD Model Tax Convention. It was noted that in the current United Nations Model Tax Convention such citations were rendered in an inconsistent way, including by using phrases such as "is reproduced", "is applicable", "further states", "reads as follows" and "is relevant". Several participants were concerned that such inconsistency could raise the question of whether the United Nations Model Tax Convention endorsed the citations from the commentary to the OECD Model Tax Convention. It was suggested that wording could be included in the introduction to the United Nations Model Tax Convention to cover situations in which only some portions of relevant OECD commentary were

<sup>1</sup> To be issued as document E/C.18/2011/4.

reproduced in the United Nations Model tax Convention, indicating how to generally interpret the exclusion of other portions.

10. The secretariat noted that the issue of whether citations from the commentary to the OECD Model Tax Convention could be considered an endorsement of the OECD passages had been discussed by the Committee in the past. While there had been broad acceptance that newer citations might be interpreted as expressing agreement with the OECD Model Tax Convention unless they indicate the opposite (see E/2010/45-E/CN.18/2010/7, para. 14), the same could not be assumed about citations that had been introduced into the United Nations Model Tax Convention by the previous ad hoc group of experts and that had not yet been reviewed by the Committee.

11. Robin Oliver, Coordinator of the Subcommittee, proposed that all references to the OECD Model Tax Convention in the revised United Nations Model Tax Convention be to the 2010 version of the OECD instrument unless otherwise stated. Participants recommended that this be explicitly mentioned in the introduction to the United Nations Model Tax Convention. At their sixth session, in 2010, the Committee expressed support for using the 2010 version of the OECD instrument as the reference, where appropriate (*ibid.*, para. 15). Under general issues, the participants in the meeting recommended that specific articles of the United Nations Model Tax Convention be treated as proper nouns and, therefore, be written with a capital A in the future.

12. Claudine Devillet presented a draft commentary on a new alternative version of article 25 B, on the mutual agreement procedure. The draft had been prepared by the Subcommittee on Dispute Resolution (coordinated by Ms. Devillet) to address the decision taken by the Committee in 2010 to include article 25 B in the United Nations Model Tax Convention.

13. Mr. Oliver presented a new draft commentary on article 7, on business profits. In his presentation, Mr. Oliver recommended that the United Nations Model Tax Convention use primarily the 2008 version of the commentary on article 7 of the OECD instrument as the appropriate version to quote. That was consistent with the views expressed at the sixth session of the Committee, according to which the 2010 version of article 7 of the OECD instrument and its commentary significantly conflicted with the approach taken in article 7 of the United Nations Model Tax Convention.

14. During the discussion of article 23, participants considered the possibility of including paragraph 4 of article 23 A of the OECD Model Tax Convention in the United Nations Model Tax Convention in order to address situations of unintended double non-taxation. Differing views were expressed, however, and it was decided that Ms. Devillet would draft a commentary relevant for such an inclusion. This would then be the subject of further consideration by the Committee.

15. Not all the suggested changes to the United Nations Model Tax Convention were addressed in detail during the meeting so that the more pressing issues could be discussed as fully as possible, with a view to determining what changes might be feasible for inclusion in the 2011 update. The participants were therefore encouraged to provide written comments on possible changes within four weeks of the meeting to Mr. Oliver, Coordinator of the Subcommittee, and to provide a copy of such comments to the secretariat.

16. In that context, the Chair of the meeting emphasized that it was particularly important for participants to continue to consider the proposed changes after the meeting had concluded and to identify in writing whether they thought it was likely that there would be any controversies that would hamper their finalization for the 2011 update. Certain proposed changes to the United Nations Model Tax Convention would need redrafting within the Subcommittee before being presented to the Committee for consideration. Contributions to that process during the meeting had been especially helpful.

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