

**Special Meeting of ECOSOC on International Cooperation in Tax Matters**  
**(New York, 7 April 2017)**

**Full summary**

**Opening of the Meeting**

1. The President of the Economic and Social Council, Mr. Frederick Musiiwa Makamure Shava, opened the meeting by acknowledging that taxation was one of the most important ways in which developing countries could mobilize resources for investment in sustainable development and meet the ambitions of the 2030 Agenda for Sustainable Development. He referred to the meeting as an important opportunity to highlight national, regional and international efforts to enhance international cooperation in tax matters and to combat illicit financial flows, as well as to strengthen the institutional arrangements to promote cooperation in these key areas. In addition, the President thanked the current membership of the Committee of Experts on International Cooperation in Tax Matters (Committee), whose term would end in June 2017, for their

negotiation guidelines and policy design for taxing the revenues from extractives. She also called for proper policies on petroleum revenues to ensure governments received fair revenue shares, limitation of benefits clauses,

considered inserting anti-abuse clauses in all double tax treaties. She also provided an overview of what the relevant subcommittee did on BEPS, including working with developing countries through surveys and discussions. One of the key conclusions of these surveys pointed to treaty abuse as a major problem for developing countries. The speaker also announced that the subcommittee had approved changes to the UN Model, which would be reflected in the 2017 update. Highlights included provisions to prevent the abuse of tax treaties and the expansion of taxing rights so that taxation could occur in the source state where income is earned. (p. 17) (t) 6.3.2 (io) 1 nng) 10.

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## Interactive discussion on United Nations Practical Manual on Transfer Pricing for Developing Countries

11. The interactive discussion on “United Nations Practical Manual on Transfer Pricing for Developing Countries” featured presentations by Mr. Stig Sollund, Coordinator of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing and Director-General, Head of International Tax Section of the Tax Law Department, Ministry of Finance, Norway; Ms. Noor Azian Abdul Hamid, Director of the Multinational Tax Department of the Inland Revenue Board of Malaysia (IRBM), Malaysia; Mr. George Obell, Chief Manager of the Transfer Pricing Audits for Large Taxpayers, Kenya Revenue Authority and Mr. Fausto Miguel García Balda, Coordinator of International Taxation in the International Tax Service of Ecuador.
12. Mr. Michael Lennard moderated the discussion and noted that while transfer pricing itself was a usual phenomenon within Multinational Corporations (MNCs), it would be the issue of mispricing that was corrosive to development. Profits were shifted so that developing countries did not achieve taxation on profits created within their territory, as they appeared to have been generated elsewhere, generally in tax havens. He also noted the various gaps between developing and developed countries and between developing countries and multinational enterprises, including with respect to access to information, legislative and administrative frameworks, and availability of technical skills, all of which the Manual tried to address.
13. Mr. Stig Sollund introduced the update of the United Nations Practical Manual on Transfer Pricing for Developing Countries. The Manual was not a piece of legislation but rather a practical tool designed for tax administrations of developing countries to deal with issues concerning transfer pricing. He noted that the Manual was a response to the need expressed by developing countries to deal with transfer pricing in line with Article 9 of the UN Model (taxation of associated enterprises). While transfer pricing was a neutral term, the tax bases of countries where MNC entities did business in were directly impacted by the terms, conditions and prices of intra-group transactions. Countries thus needed tax rules to repair and adjust the distortive effects of special relationships between parties. Mr. Sollund also discussed the newly-added chapters to the Manual, including those on intra-group services, intangible assets, cost-sharing agreements and business restructuring. The new edition further covered Article 9 and sought consistency with the outcomes of the BEPS project and the OECD Transfer Pricing Guidelines. There was also revised guidance on comparability analysis and documentation and new and extended sections on commodity transactions and country practices. Additionally, he mentioned that the Manual addressed transfer pricing methods such as the 6th method that reflected a special methodology used by a number of Latin American countries.
14. Ms. Noor Azian Abdul Hamid discussed practical taxation challenges that Malaysia had faced, especially with regard to intra-group services and explored how the Manual aided in mitigating a few of these challenges. For instance, she noted that Malaysia was a service-recipient country, where subsidiary companies paid significant amounts of service fees. Nonetheless, there was a lack of elaboration on what comprised these service or “management” fees. Other challenges included documentation aspects of transfer pricing such as a company’s capability to conduct benefit tests, the lack of information on what an appropriate allocation key was and how to accurately verify the cost base of claims. The dearth of information on methodologies employed by companies in other jurisdictions was another challenge the Manual addressed by way of country-by-country reporting. Ms. Azian also noted the lack of detailed, publicly available information on service comparables, an issue faced by most developing countries. The lack of published industry rates to establish an appropriate safe harbour was pointed out as another issue to focus on. Her team would also focus on the new Manual’s discussion on the 6th method, business restructuring and documentation, which were issues especially relevant to Malaysia.
15. Mr. George Obell acknowledged that MNCs played a key role in the Kenyan economy. However, he noted that many of them were reporting losses despite embarking on sustained capital



Handbook was intended to build awareness of the most relevant issues related to the industry, support policy makers and administrators in developing countries, as well as to provide information to other stakeholders. Mr. Mensah also briefly summarised the guidance notes on select issues for the extractive industry, such as tax treaties, permanent establishment, value added tax, indirect assets transfer, and the tax treatment of decommissioning operations.

21. Mr. Johan Cornelius de la Rey presented the guidance note regarding fiscal take in the extractive industries. The note provided context on how value derived from natural resources could be shared between government and investors, showing both perspectives, as well as features of different types of fiscal regimes. He explained how these tax instruments interacted among themselves and with the general tax regime in a country. He further noted that the Subcommittee also worked on the tax aspects of negotiations and renegotiations of contracts, where many

violate the rules of transfer or finance, or are used to finance illicit activities. The fact that there were no comprehensive tools to measure the exact extent of these flows was no excuse for inaction to curb them. The moderator noted the various ways in which these flows could occur such as through transfer mis-pricing and trade mis-invoicing, including practices such as under-reporting exports, hiding export revenues, or acquiring extra foreign exchange by over-importing. Countries thus needed to share information on corporate activities and utilize existing regional and international momentum to combat illicit financial flows.

26. Ms. Carola Iñiguez Zambrano noted that tax evasion through illicit financial flows affected Least Developed Countries (LDCs) disproportionately given that it undermined their ability to finance sustainable development. She stressed the need to end tax havens to help developing countries that faced institutional limits to combat tax fraud. She proposed the establishment of an intergovernmental body on tax matters as a proper forum for international tax cooperation. In Ecuador, there had been millions lost to corporate tax evasion, revenue that could have been channelled into government initiatives. Thus, combating tax evasion was a political commitment of the Ecuadorian government. She also noted the referendum adopted in February last year to prohibit civil servants elected by popular vote from having assets or capital in tax havens. Ms. Zambrano noted that domestic resource mobilisation was a key Means of Implementation (MoI) for the Sustainable Development Goals (SDGs). In this context, she noted with concern that international tax cooperation to combat IFFs was biased towards richer countries and followed an ad-hoc approach. To ensure more systemic and equitable cooperation, she called for an intergovernmental body to combat illicit financial flows. The speaker further noted the importance of combating corruption, implementing automatic information exchanges and taking into account the degree of development in developing international tax norms and rules.
27. Ms. Omotese Eva noted that illicit financial flows stem from commercial sources, criminal activities and corruption. She highlighted that Africa had lost over a trillion dollars in the past 50 years due to transfer mis-pricing, money laundering, tax evasion, and other criminal activities. The speaker noted that curbing illicit financial flows and tax evasion was a crucial way to support domestic resource mobilisation. She emphasized that many MNCs and wealthy individuals continued to influence domestic policy in their favour, evade payment and maximize profits through the use of tax havens. BEPS was an important tool to review existing provisions in bilateral tax treaties and tax conventions. Nigeria had set up committees to examine current Double Taxation Agreements (DTAs) and domestic laws on taxation. She also welcomed other global efforts to combat illicit financial flows through information-sharing, the exposure of perpetrators and stolen asset recovery and highlighted the importance of the arms-length principle as well as country-by-country reporting. She also referred to the 15 point action plan in Nigeria to combat illicit financial flows, which included the setting up of a Single Treasury Account through the central bank to curb IFFs and corruption and the introduction of the Bank Verification Number, which curbs illegal bank transactions. However, international cooperation to curb IFFs was still needed, through efforts such as mutual legal assistance.
28. Ms. Maria Angela Ponce noted that there was a lack of an internationally-agreed definition on illicit financial flows. The Philippines' definition encompassed ex-President Ferdinand Marcos' "ill-gotten" funds and instances of trade-invoicing. Illicit financial flows were an important issue to the Philippines as the country's budget was primarily financed by domestic resource mobilisation, which can be threatened due to these flows. To address these issues, the Philippines had embarked upon tax and customs reform, tax collection campaigns and increased the efficiency of tax administration programs. While there were inherent deficiencies within revenue collection such as non-indexation, there were efforts to simplify forms and processes, improve tax compliance and improve processing and valuation systems to reduce illicit customs activities. Additionally, the Philippines also sought to improve their legislative framework by strengthening anti-money laundering laws and advance a more collaborative partnership with the private sector to coordinate and improve databases and establish guidelines. Cross-border cooperation was also strengthened to enforce reporting standards and advocate information-sharing. Ms. Ponce noted

the need to promote



manners by fixing both supply-side issues (such as ensuring that countries were willing to provide information) and demand-side issues, where there was still significant scope for developing countries to participate more fully in the Forum. Ms. Bhat



and China stressed the need to further scale up international efforts to strengthen tax cooperation and to combat IFFs. The Group highlighted the lack of a single global inclusive forum for international tax cooperation at the intergovernmental level and urged Member States to consider the upgrading of the Committee to an intergovernmental subsidiary body of ECOSOC. Developed countries, including the European Union, emphasised their firm understanding that the expert nature of the Committee should not be changed and that the discussions on implementing the agreement contained in paragraph 29 of the Addis Ababa Action Agenda had been concluded. In this connection, the importance of the OECD in promoting tax cooperation, in particular through the Global Forum on Transparency and Exchange of Information for Tax Purposes, was also highlighted.

41. The meeting concluded with closing remarks by the President of ECOSOC summarizing the key points of the discussion and highlighting the importance of the Special Meeting for building momentum around national, regional and international efforts to enhance tax cooperation and curb illicit financial flows.