United Nations Tax Committee (Committee of Experts on International Cooperation in Tax Matters)

The UN Tax Committee of Experts met for its 11th session in Geneva from 19 to 23 October 2015. The Agenda is available on the website while the background papers can be accessed by clicking here. The Agenda shows what items were discussed but the order was continuously changed throughout the week and the actual time allocated varied quite significantly depending on the events and discussions during the course of the week.

Opening session

The session began with a presentation from Alexander Trepelkov who is the UN Director in charge of the Financing for Development Office.

The role of the Tax Committee was fiercely debated at the Third Finance and Development Conference in Addis Ababa in July 2015 with the Group of 77 countries and China being strongly in favour of an upgrade of the Tax Committee to a UN Intergovernmental Organisation. This would give the Committee more prominence in the UN, and internationally, would lead to greater resources for the Committee and would probably change the focus of the UN work from purely technical to become more broad ranging ie dealing with development issues and not just technical tax issues. The move to enhance the status of the Committee was fiercely contested by the developed countries who won the day on that occasion.

Alex, in his presentation, highlighted four initiatives:

- Tax Inspectors without borders;
- EU led capacity building through domestic mobilisation;
- IMF World Bank initiative to increase participation of developing countries; and
- UN proposal for an Asia Pacific Tax Forum.

In the absence of more details on the proposals it is difficult to be clear what they mean in practice and to evaluate what they might achieve. The first one has been on the OECD Agenda for some time so there is information about this on the OECD website for instance.

Some background to the role, status and future operation of the UN Tax Committee

The likelihood is that the Committee will continue to look at technical issues and in particular tax treaty, transfer pricing and capacity building issues.

The status of the Committee is likely to remain as a Committee of Experts for the foreseeable future. The current Committee was appointed for a four year period from 2014 so in 2016-17 there may again be moves to change the status prior to a new Committee being elected in 2018.

The decision was taken in Addis Ababa for the Committee to have, in the future, two annual four day meetings, rather than one five day meeting. The meetings will take place in New York, HQ of the UN, and Geneva but at the moment it is uncertain whether the new arrangements will start in 2016 or 2017.

Later in the week Jeffrey Owens, predecessor of Pascal Saint-Amans as head of tax at OECD, suggested that the debate at Addis Ababa should have been about the resources allocated to the UN Tax Committee and not its status. It needs more resources to be in a position to achieve more.
Relations with OECD
It is absolutely clear that OECD considers itself to be the preeminent international tax body and the G20 BEPS Action Plan and its, so far, successful outcome has reinforced that view, not least amongst OECD officials.

One potential weakness in the OECD position is its failure to represent all the major (political) constituencies in the world and so that its outcomes have, genuine, global legitimacy. At the outset of the BEPS work OECD often stated that the 44 countries involved at the outset, including non OECD G20 countries, gave its work the required global legitimacy. During the first year of work in 2014 it recognised the credibility problem and in 2015 increased the number of countries actively participating in the Action Plan to 62 countries including a group of 10 developing countries.

UN Publications
A number of publications were distributed to attendees soft copies of which are available on the UN Financing for Development website.

UN Handbook on Selected Issues in Protecting the Tax Base of Developing Countries
This contains ten chapters written by academics, including an overview chapter, the latter written by Hugh Ault and Brian Arnold. Chapters cover taxation of services, non-resident capital gains, limiting interest deductions, treaty abuse, permanent establishment, digital economy and tax incentives.


UN Handbook on Selected Issues in Administration of Double Tax Treaties
This book which was distributed at this year’s Committee was published a couple of years ago.


Practical Manual on Transfer Pricing for Developing Countries
This was also published a couple of years ago but hard copies were distributed at this year’s Committee.


Practical Manual on Negotiation of Double Tax Treaties between Developed and Developing Countries
There is a sub-committee working on this and it presented a report to the 2015 UN Committee. An edited version is available on the website and it will be published before the end of 2015.

MAJOR WORK STREAMS OF UN TAX COMMITTEE IN 2015

The new Services Article
It has been decided to add a technical services Article into the UN Model and such technical services will be able to be taxed in the country where they “arise” and not necessarily where they are performed. This year there was further discussion about paragraphs that are going to be added to the Commentary on this new Article setting out the disagreement of a number of developed countries, including the UK and the US, about taxing services when they are
not performed in the country and when there is insufficient nexus with that country, under the
normal international tax rules, to support a charge.

This new Article is not going to find its way into the Model UN Convention until probably
2017 and it will then be a number of years before it gets into individual bilateral treaties.
Nevertheless developing countries may use the new Article as a bargaining counter and
while they may not force it into new treaties they may exact other concessions in return for
not pursuing the Services Article.

Capacity Building
This is a major issue for the Committee and the developing countries and there is a specific
sub-committee dealing with this and the secretariat submitted a progress report which
provides a good summary of the various publications, courses etc that are being developed
and run to provide the knowledge and skills that the developing countries are going to need
to run their tax systems efficiently and effectively.

Code of conduct
A Code of conduct was debated which it is intended should be adopted by ECOSOC and will
then have official status. Last time this was done, about 5 or 6 years previously, it had been
presented in such a way that ECOSOC had just noted it which gave it no status at all.

TECHNICAL ISSUES COVERED AT 2015 MEETING

Payments via hybrid instruments
This was presented by Henry Louie the US Committee member. In the course of his
presentation he mentioned that the new US Model Convention will incorporate all the BEPS
Action 2 proposals.

The question discussed was the payment from the resident to the source country when the
“owners” of the income may themselves be resident in a third country.

Permanent Establishments (PE) and connected projects
The approach of the UN, in contrasts to that of OECD, is to take account of the customer as
well as the enterprise in determining whether projects are connected. There was a
discussion of what “associated enterprise” means which is the wording also used in Article 9
but which has a different meaning. In the BEPS Action Plan the meaning is “person closely
connected with the enterprise”.

Royalties
A new sub-committee has been set up to look into potential improvements to the
Commentary to Article 12 of the UN Model Treaty.

Taxation of Extractive Industries
The sub-committee was established in 2013 and now has a considerable number of outside
members and produced a number of papers, guidance notes, which were presented to the
2015 meeting.

The topics which are covered in the guidance notes are the ones which have been identified
as the most pressing for developing countries and are:

- Capital gains tax and indirect transfers
- Selected treaty issues
- Tax treatment of decommissioning costs
- Value Added Tax
SUB-COMMITTEES OF THE UN TAX COMMITTEE
As the main Committee meets only once a year a lot of the actual work is carried out in the Sub-Committees which then report to the main Committee.

At the moment the current Sub-Committees are:

Article 8 – International Transportation
Article 9 – Associated Enterprises – transfer pricing
Base Erosion and Profit Shifting
Negotiation of tax treaties – practical manual
Exchange of Information
Extractive Industries – Taxation issues for developing countries
Tax treatment of Services
Capacity development
Royalties (established at 2015 Committee meeting)

Ian Young
Chair of CFE Fiscal Direct Tax Sub-Committee
November 2015
Annex – Address by Pascal Saint-Amans – Tax Director OECD

Pascal Saint-Amans came along to the Committee and gave the delegates and observers an update on latest developments.

The BEPS package comprising the 13 papers published on 5 October 2015 were accepted by the G20 Finance Ministers at their meeting in Lima, Peru on 8 October.

These papers had been earlier presented to the OECD Committee of Fiscal Affairs meeting on 22 September and then to the OECD Council before going before the G20 Finance Ministers.

The final acceptance will be at the G20 Summit in Antalya, Turkey on 14/15 November when the Presidents and Prime Ministers will have a separate session on taxation. Pascal expressed the significance of the fact that the heads of government would themselves be considering tax matters which is scrutiny at a level of detail unusual for such a high status group!

Pascal noted that there were different approaches to the separate Actions contained within the BEPS package:

Minimum standards
This covers Treaty Abuse, TP documentation and CbC reporting, MAP, Harmful tax practices + one other issue and here countries will be required to adopt those minimum standards.

Need to converge
This covers interest deductibility, hybrid mismatches and these issues are going to be kept under observations and progress will be reviewed in a few years’ time. There is no immediate requirement to take action.

Best practice
This covers Mandatory Disclosure and CFCs. Not all countries will want to follow the options as set out in the papers.

Instruments
TP Guidelines, Model Double Tax Convention and the Multilateral Instrument

Pascal talked about the increasing interest in the BEPS work over the time that the Action Plan was being developed and the various regional meetings that had been set up and the engagement with developing countries which had led to 62 countries being engaged in BEPS and having a seat around the OECD CFA table.

The next task for OECD will be to develop an inclusive framework for BEPS implementation by early 2016. This needed to include a monitoring arrangement for the minimum standards.

Pascal also talked about the work on Action 1 Digital Economy where BEPS issues were recognised to be exacerbated by the digitalisation of economies. Lots of the issues that had been identified would be addressed by other Actions.

Pascal also mentioned Action 11 which is about measurement of BEPS.

Developing countries
Pascal suggested that they have other requirements. Capacity building is important and other issues include tax incentives and lack of comparables re Transfer Pricing.
OECD is developing Toolkits

**Other issues covered by Pascal**
On AEOI (Automatic Exchange of Information) Pascal said that Panama had now signed up which it had done during the course of the UN General Assembly in September. There are now 94 countries involved.

On CbC reporting there is a requirement for a review of the arrangements in 2020 which will be a couple of years after the CRS (Common Reporting Standard) has come into force.

**Question session**
The Chinese delegate asked about the potential for disputes post BEPS and cited this as a concern for MNCs. The question neatly encapsulates the emergence of China from a developing source country to a resident country home to some of the largest multinational companies in the world. She suggested that countries are likely to interpret and implement differently. How can one improve certainty? It seemed to me rather odd that China should be raising this as an issue but Pascal suggested that there were already a lot of disputes and so BEPS is not the main cause. But if BEPS exacerbates what may be a less than ideal situation ie too many disputes that is still a valid criticism of BEPS!

Then the Indian delegate suggested that all the BEPS Actions are revenue drivers and there is no place for the taxpayer. There are also problems about confidentiality. Pascal said BEPS was about getting the balance right.