news and developments
in the field of tax and development

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international tax compact

# Welcome to the new edition of the ITC newsletter

Dear Reader,

With the 7th Plenary Meeting of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, which was held in Berlin on 28 and 29 of October, a further step was taken towards implementing an automatic exchange of information. It is crucial that developing countries' perspectives on that process are sufficiently taken into account.

Next year will be another important year for domestic resource mobilisation with the Financing for Development Conference, which will be held in Addis Abeba, and the United Nations Summit on the Post-2015 Development Agenda, which will take place in New York.

On a personal note, we would like to thank Roland von Frankenhorst for the commitment he brought to the ITC as head of the ITC Secretariat since its formation in 2009. We wish him a successful start in his new role.

The following articles present a short overview of the latest developments in international tax cooperation. Kindly note that the perspectives and opinions expressed in this newsletter are exclusively those of the contributing institutions and do not necessarily reflect the views of the ITC.

If you have any questions or suggestions regarding the newsletter, or if you would like to contribute an article for the next issue, please do not hesitate to contact us.

Enjoy the articles!

Best regards,
ITC Secretariat

**International Tax Compact (ITC)**
**Secretariat at GIZ Office Bonn**
**Godesberger Allee 119**
**53175 Bonn, Germany**

**E** secretariat@taxcompact.net
**I** www.taxcompact.net

international tax compact:
strengthening
effective, efficient and fair
tax systems

## 10th Session of the Committee of Experts on International Cooperation in Tax Matters, Geneva

The United Nations Committee of Experts on International Cooperation in Tax Matters ('the Committee') held their tenth meeting in Geneva, Switzerland, from 27 to 31 October 2014. The second session of the current membership, appointed for a period of four years, was attended by 21 country observers, four international organisations and more than 60 observers from business, civil society and academia.

The Committee marked its ten-year anniversary by reaffirming its commitment to supporting source state taxation, as evidenced in the *United Nations Model Double Tax Convention between Developed and Developing Countries* ('UN Model'). It provides for income earned by a tax payer to be taxed in the country where the economic activity takes place and not in the country of residence of the tax payer. This became most evident in discussions on a new article on fees for technical services that responded to developing countries' call for the UN Model to recognise and give guidance on mobilising revenue for sustainable development from engagement with the service economy. More and more services are being rendered in a country where the service provider has no physical presence, thereby often circumventing taxation. This new article, which will continue to be discussed at the next annual session of the Committee, will make it possible, where agreed under a tax treaty, to tax the profit derived by a foreign resident engaged in a source country economy without necessarily requiring a 'bricks and mortar' presence.

A proposed amendment to the UN Model Commentary to Article 26 (Exchange of Information) was agreed upon, making it easier for different tax jurisdictions to share information to curb tax avoidance and evasion. There was also agreement on an update to the Commentary to Article 9 (Associated Enterprises) reflecting, among other things, the emergence of the *United Nations Practical Manual on Transfer Pricing for Developing Countries* ('Manual') The Committee will continue to discuss the application of tax treaties to hybrid entities (i.e. entities characterised differently by treaty partners as to their transparency or opacity for tax purposes) while ensuring that outcomes are easy to administer for under-resourced tax authorities in developing countries. It will also address 'auxiliary/ancillary activities' that define the coverage of Article 8 and the definition of royalties under Article 12. The Committee has committed to finish work on an updated UN Model by the end of the current term of its membership in mid-2017.

The *Subcommittee on Article 9 (Associated Enterprises) – Transfer Pricing* has likewise agreed to aim for an updated version of the Manual. Other Subcommittees, such as the *Subcommittee on the Negotiation of Tax Treaties – Practical Manual* and the *Subcommittee on Extractive Industries Taxation Issues for Developing Countries* presented their progress and sought approval for their work plan. That work plan includes an overview note and guidance notes on selected topics, such as capital gains taxation including the issues of overseas 'indirect sales', value added taxation, tax treatment of the decommissioning of extractive facilities, tax treaty issues, effective review of invoicing and costs, permanent establishment matters, and negotiation and re-negotiation of contracts. The Secretariat was also mandated by the Committee to prepare a paper on tax arbitration issues for developing countries and ways forward on this subject.

The next meeting of the Committee will take place in Geneva, Switzerland, from 19 to 23 October 2015 and is open to observers after prior registration.

For more information on the work of the Committee please go to:
**http://www.un.org/esa/ffd/ffd-follow-up/tax-committee.html**
or email Michael Lennard at **lennard@un.org**
and Ilka Ritter at **ritter@un.org**


## ITC/EC/WBG
## International Conference on Taxation of Extractive Industries, Brussels

From 9 to 11 September 2014, the International Tax Compact, the European Commission (EC) and the World Bank Group (WBG) jointly hosted the International Conference on Taxation of Extractive Industries in Brussels. The event brought together over 100 representatives from 25 countries and 5 continents, representing tax administrations and other government agencies in developing countries, federations of tax administrations and supreme audit institutions, international organisations and development partners, the private sector, civil society and research institutions.

The conference provided a platform for intense exchange of information and experience in order to strengthen tax compliance in the extractive industries, take stock of lessons learned in building revenue administration's capacity for taxing extractive industries, take different perspectives to obtain a diversity of views and assess synergies. On that basis, the conference sought to identify ways for effective support through strengthening domestic tax systems and international cooperation.

Participants identified a range of challenges hampering effective taxation of extractive industries in developing countries. Tax systems are often overly complex, providing specific incentives and exemptions for the extractive sector in order to attract investment. There was broad agreement that many incentives are unnecessary and that


transparent, stable and well implemented tax regimes provide a sound environment for the private sector.

Several possible opportunities for overcoming challenges to extractives taxation were identified. Developing country governments can improve fiscal frameworks and strengthen the organisation and capacity of tax administrations. It is important to ensure that ministries of finance and tax authorities play an appropriate role in contract negotiations with extractive industries so as to ensure a sound context for auditing and other tax administration aspects.

Coordination between government institutions involved with extractives taxation can be improved in several ways, including by establishing clear processes for information sharing between these institutions and leveraging insights of supreme audit institutions. Private companies and civil society play a critical role in improving extractives taxation. Civil society has been instrumental in the vast improvement in transparency in extractives activities in recent years. Representatives from the private sector welcomed greater transparency of extractives revenues through CSO-initiated efforts such as the Extractive Industries Transparency Initiative (EITI) and their own efforts.

The co-hosts and other international assistance providers promote improvements in extractives taxation with a range of support, including advice, technical assistance, knowledge services and financial support. Global solutions and policies developed by international organisations and others have to be transformed into practical implementation models.

Overall, the results can be summarised in four priority fields of work for the future. These are also the areas where support from development partners and international organisations can contribute:

- Reforms regarding the fiscal framework
- Institutional strengthening and capacity development
- Inter-institutional coordination and cooperation, and
- Enhancing transparency and accountability.

Given the different conditions in each country – endowment with natural resources, different legal frameworks and institutional set-up – they each need to define their present situation first and then adequately plan measures for improvement.

For further information please visit the ITC website: **http://www.taxcompact.net/activities-events/2014/EC-ITC-WB-Conference-Brussels_Sep.html**
or contact **secretariat@taxcompact.net**

## Strengthening the Global South's Voice in Global Tax Governance


On 30 October 2014, a coalition of civil society organisations hosted a panel discussion as a side-event during the 10th meeting of the UN Committee of Experts on International Cooperation in Tax Matters in Geneva. Three panellists, Manuel Montes, Senior Advisor, Finance and Development at South Centre, Tove Maria Ryding, Senior Policy Analyst at Eurodad and Dereje Alemayehu, Chair of the Coordinating Committee of the Global Alliance for Tax Justice, discussed the current state of global tax governance and opportunities for strengthening the role of the Global South.

Discussions flourished about the intensification of international cooperation in tax matters, giving rise to processes under the anti-BEPS framework at the OECD and G20. Nevertheless, countries in the Global South that are suffering the most from the impacts of tax evasion and avoidance (at least in relative terms, as recent papers by the IMF and OECD show) are largely excluded from this increasing cooperation. Once again, global standards are being developed without equal representation of developing countries, and with the majority of the world's countries excluded from the decision-making processes.

At the same time, the Intergovernmental Commission of Experts on Sustainable Development Finance concludes that 'a participatory and broad based dialogue on international cooperation in tax matters should be strengthened'. But how can such dialogue and cooperation be fostered without marginalising a majority of governments?

Experts pleaded for re-creating a meaningful place outside the selected clubs of the OECD or the G20 in order to craft meaningful norms and mechanisms that strengthen tax governance at all levels. The UN is the natural place for this, especially since now is the time to discuss a Financial Transaction Tax.

Even if we would consider that a discussion could be held centrally either in the IMF or the UN (two legitimate alternatives), in any case the time has come for an international mechanism to be discussed in a truly multilateral setting that includes the voice of developing countries.

For further information please contact:
Wolfgang Obenland, Global Policy Forum, at
**europe@globalpolicy.org**


## ATAF Members discuss Leadership and Management at 3rd General Assembly in Dar es Salaam

Bringing African heads of tax together to discuss a non-tax technical subject, but one that is of vital importance to revenue administration. This was the aim of this year's ATAF General Assembly, in its 3rd edition which took place in Dar es Salaam, Tanzania from 15 – 19 September 2014. The General Assembly is the highlight of the ATAF calendar and discussing 'Rethinking Leadership and Management Strategies in the African Tax Agenda' provided the platform to explore the revenue administrations outside of the traditional tax discussions.

This topic was in recognition of the need to embrace global best practice in leadership and management to enable tax administrations take advantage of opportunities arising in the domestic market while confronting the challenges presented by the global tax environment. Among the excitement of the conversations between business, revenue administrators and academics, delegates discussed; gender equity in tax administration, human capital development, global best practices in leadership as well as governance matters. Dominating discussions was the session on gender equality in tax administrations. This brought about significant debate on the role women have to play in administrations as well as ain the African development agenda. Contributions from a number of member countries illustrated the passion African tax administrations have for developing women in leadership positions.

Other topics on offer for discussion included the debate on how technology can be used to assist employees achieve targets as well as how they are monitored. The conference featured breakaway sessions which meant there was more scope for discussion of topics including a topic on data analysis and collection for improved revenue performance.

The conference also used the opportunity to conduct other matters of business for ATAF. Monday 15 September commenced with the 8th sitting and the last sitting of the Council before elections, followed by a donor consultation meeting. The following day was the official opening of the General Conference Assembly opened by Vice president of the United Republic of Tanzania, H.E. Mohammed Gharib Bilal.

Attending the conference were international guests, donor agencies, representatives of the media as well as senior government officials from Tanzania and 30 ATAF member countries.

For further information please contact:
Thulani Shongwe, Multilateral Cooperation, at
**tshongwe@ataftax.org**

## Workshop on Tax Base Erosion Profit Shifting (BEPS) in Santiago de Compostela

On 10 October and following the CIAT 2014 Technical Conference in Santiago de Compostela, Spain, a one-day workshop was held entitled Tax Base Erosion and Profit Shifting (BEPS): Benefits and challenges on implementation of the OECD/G20 BEPS Project.

The International Tax Compact (ITC), the World Bank Group, GIZ and CIAT sponsored the event, which was hosted by the Spanish Tax Department. The primary objective of these workshops is to provide an informal forum to CIAT member countries to discuss particular tax administration topics. This Spain event was a follow-up to the BEPS seminar that took place in Colombia and Trinidad and Tobago earlier in the year. The primary purpose of the Spain event was to specifically focus on the 15 BEPS Action Plan items and for tax administrations to report on progress, observations and/or concerns with the implementation of the Action Plan items.

While the prior two events had a predominantly Latin American and Caribbean audience, the Spain workshop also included delegates from Europe, Asia and Africa. This mix fuelled very robust and enlightening sessions. Ms Grace Perez-Navarro, Deputy Director OECD-CTPA, delivered the opening presentation. She provided a detailed report on the current status of the BEPS project and the Action Plan. This was followed by presentations from CIAT member countries that addressed particular BEPS Action Plan initiatives and their particular country's experience with the Action Plan item. In summary, the workshop was very beneficial to many of the participants.

For further information please contact:
Socorro Velazquez at **svelazquez@ciat.org**
or visit the website: **www.ciat.org**

## CRAFT Strategy meeting in Kenya – Civil Society and Trade Unions discuss Fair Tax in Africa and Asia

The Capacity for Research and Advocacy for Fair Taxation (CRAFT) project organised the 7th CRAFT Strategy Meeting in Naivasha, Kenya, on 25 and 26 June 2014. The meeting was hosted by Tax Justice Network-Africa and was attended by over 50 participants from Africa and Asia. The participants were partners from the CRAFT project and members from the African International Trade Union Confederation (ITUC). The meeting was organised within the framework of the ITC/GIZ co-funded CRAFT project, which was developed through collaboration between Oxfam, Tax Justice Network-Africa and other country-based partners in Uganda, Mali, Senegal, Nigeria, Ghana, Egypt and Bangladesh with a view to achieving accountable, fair and pro-poor tax systems.

During the meeting the CRAFT partners shared successes and challenges related to recent activities in the field of tax research, training, civic education, policy advocacy and alliance building. The participants identified a number of strategic focus areas, among others: strengthening the comparability of research data and expanding the dissemination of publications, expanding the outreach of training and gathering success stories for learning.

In addition, the CRAFT partners and ITUC members discussed how they could strengthen each other in enhancing domestic resource mobilisation and promoting a fair tax system. Trade unions are increasingly taking up the issue of tax justice in their work and consider taxation as a human rights issue. There was general consensus that unions could benefit to a great extent from the tax knowledge and expertise of civil society, while civil society organisations could really benefit from the outreach and mobilisation potential of the trade unions.

Preparations are now underway for the next strategy meeting, which is likely to take place in Bangladesh in March 2015.

For further information please contact Ilse Balstra, CRAFT Project Leader, at **Ilse.balstra@oxfamnovib.nl**
or visit the website: **www.maketaxfair.net**

## CIAT, IMF, IOTA and OECD sign Letter of Intent to Establish a Common Platform for the Collection of Data Concerning Tax Administration


During their presence at the 9th Meeting of the OECD Forum on Tax Administration held in Dublin, Ireland, representatives from CIAT, IMF, IOTA and OECD signed a Letter of Intent to Establish a Common Platform for the Collection of Data Concerning Tax Administration.

The organisations have recognised that the development of a common platform for data collection offers many benefits to them and to their members. The organisations have entered into discussions to establish the feasibility of a common platform and concluded that further work to adequately accommodate all four organisations' needs via a common platform offers the potential for real and tangible benefits. Specifically, they have noted that:

- The R/A-FIT tool developed by the IMF is capable of capturing the data set on which the FTA Series is based on-line and has valuable logic and error-prevention capabilities;
- There is significant overlap between the data needs of the organisations, and it will be feasible to develop a common set of questions to cover the majority of their data needs; and,
- Adopting R/A-FIT as a common data collection tool would reduce duplication of efforts by the organisations and significantly lower the cost of data provision for individual tax administration members.

The organisations have agreed to a set of principles on which cooperation in the collection of data concerning tax administration would be based.

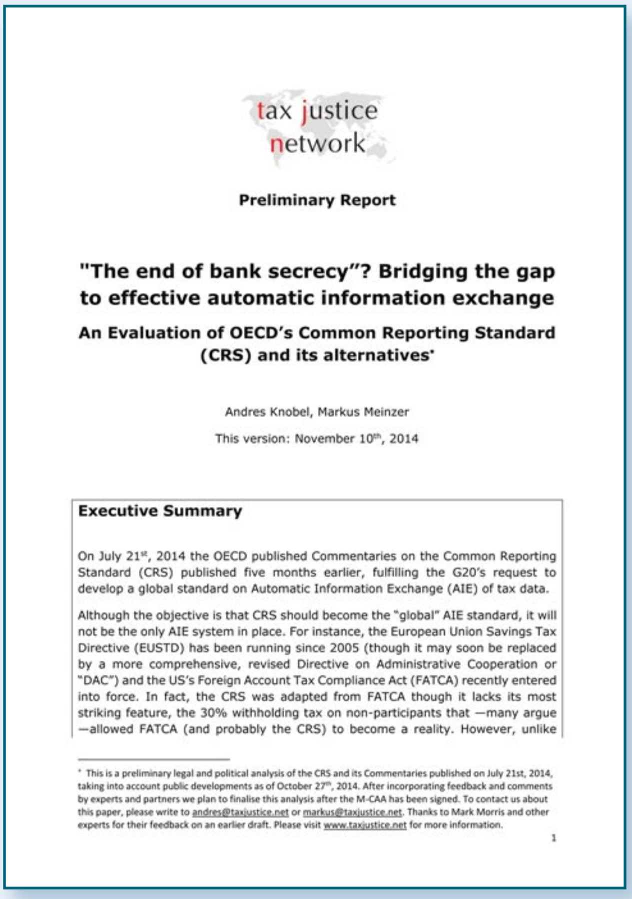
The letter was signed to record the intent of the organisations to complete the remaining steps needed to realise the goal of participating fully in a functional system to provide members with more current and useful information.

Signatories for the organisations were: CIAT – Socorro Velazquez; IMF – Juan Toro; IOTA – Miklos Kok; and, OECD – Pascal Saint-Amans.

For further information please contact Socorro Velazquez, CIAT Institutional Planning and Development Director, at **svelazquez@ciat.org**

## It is not yet the End of Bank Secrecy

The OECD's new global standard on Automatic Information Exchange (AIE) appears to be on the fast track, with the Commentaries to the Common Reporting Standard (CRS) published last July 21 and the Multilateral Competent Authority Agreement (M-CAA) signed by 51 jurisdictions last October 29. While these first steps are necessary to make AIE a reality, they are not sufficient to ensure its effectiveness and worldwide implementation.



tax justice network

Preliminary Report

**"The end of bank secrecy"? Bridging the gap to effective automatic information exchange**

**An Evaluation of OECD's Common Reporting Standard (CRS) and its alternatives***

Andres Knobel, Markus Meinzer

This version: November 10th, 2014

**Executive Summary**

On July 21st, 2014 the OECD published Commentaries on the Common Reporting Standard (CRS) published five months earlier, fulfilling the G20's request to develop a global standard on Automatic Information Exchange (AIE) of tax data.

Although the objective is that CRS should become the "global" AIE standard, it will not be the only AIE system in place. For instance, the European Union Savings Tax Directive (EUSTD) has been running since 2005 (though it may soon be replaced by a more comprehensive, revised Directive on Administrative Cooperation or "DAC") and the US's Foreign Account Tax Compliance Act (FATCA) recently entered into force. In fact, the CRS was adapted from FATCA though it lacks its most striking feature, the 30% withholding tax on non-participants that —many argue —allowed FATCA (and probably the CRS) to become a reality. However, unlike

* This is a preliminary legal and political analysis of the CRS and its Commentaries published on July 21st, 2014, taking into account public developments as of October 27th, 2014. After incorporating feedback and comments by experts and partners we plan to finalise this analysis after the M-CAA has been signed. To contact us about this paper, please write to andres@taxjustice.net or markus@taxjustice.net. Thanks to Mark Morris and other experts for their feedback on an earlier draft. Please visit www.taxjustice.net for more information.

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Regarding its effectiveness, the Tax Justice Network (TJN) published a report explaining the scope of the CRS, its exclusions and more than 30 loopholes which could be exploited by tax dodgers and money launderers to avoid reporting of information. The report is available here: **http://www.financialsecrecyindex.com/PDF/TJN2014_AIE-Technical-Report.pdf**

As for international implementation of the AIE, especially by developing countries, many obstacles prevent their inclusion. On the one hand, full reciprocity is demanded from the beginning. Moreover, signing the M-CAA is not enough to receive information from all other signatories. On the contrary, jurisdictions may choose with whom to exchange information, so the AIE will take place only when there is a match, as in a dating system.

In addition, jurisdictions must comply with general confidentiality requirements plus any subjective safeguards for protection of personal data imposed by the sending jurisdiction. On top of everything, the US will not implement the CRS but only FATCA. The problem with this is that FATCA's engagement is bilateral, not all countries have signed pertinent agreements, and more information flows to the US than from the US. In other words, jurisdictions would be able to receive more information from the US if it engaged in the CRS rather than only in FATCA.

The AIE will be effective only when all countries, especially developing ones, are able to reap its benefits. The TJN is committed to working towards that goal.

For further information please contact Andres Knobel at **andres@taxjustice.net**

## DIE and LSE cooperate on Illicit Financial Flows

The German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE) and the London School of Economics and Political Science (LSE) are currently implementing a joint study project entitled Fighting illicit financial flows – what role for developing countries?. This so-called ‘Capstone Project’ will be carried out by five master’s students at LSE under the guidance of Tasha Fairfield (LSE) and Christian von Haldenwang (DIE).

In several recent initiatives, international organisations such as the G20 and the OECD have raised the issues of base erosion and profit shifting (BEPS), illicit financial flows (IFF) and the challenges of domestic revenue mobilisation in developing and fragile countries. These organisations recommend a set of policy changes and administrative reforms. Recommendations are directed to governments as well as donors. While it is doubtful whether unilateral actions on behalf of developing countries alone can be effective in tackling IFF, it is clear that any solution to IFF will have to include the developing world.

The project will assess the degree to which the recommended actions can be put into practice, identify the specific challenges (resource-rich) developing countries are facing and discuss options for donors and international organisations to support governments in this area. In two or three case studies the project team will analyse governmental efforts aimed at tackling IFF. With the Capstone Project, the DIE and LSE aspire to enrich the current debates on fighting illicit financial flows and mobilising domestic revenue by highlighting a specific aspect: the policy space and political economy of relevant action in developing countries. Results from the project will inform DIE advisory work to the German Government during its G7 presidency. Findings will be presented at a workshop in Bonn in spring 2015.

For further information please contact Christian von Haldenwang, German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), at
**christian.vonhaldenwang@die-gdi.de**

## 4th Meeting of CIAT Tax Studies and Research Network

The fourth Meeting of the CIAT Tax Studies and Research Network was held on 29 and 30 September 2014 in Montevideo, Uruguay, under the title Behavioural Economics and Tax Administration: New approaches to analysing tax compliance. This event was co-organised with the DGI of Uruguay and was sponsored by GIZ. This meeting brought together delegates from 13 CIAT member countries and representatives of the IDB and the World Bank. The main speaker of the meeting was the renowned Professor Gareth Myles, Director of the Tax Administration Research Centre of the United Kingdom and Professor at the University of Exeter. He discussed the shortcomings of traditional models or standards that analyse the tax noncompliance phenomenon and the new contributions of behavioural economics; as well as audit strategies with economic modelling and simulations.

For further information please contact Miguel Pecho, CIAT Tax Studies and Research Director, at **mpecho@ciat.org**

## IBFD Training on Maintaining Tax Treaties held in Amsterdam


As part of the Netherlands Government programme to strengthen the revenue authorities in partner countries, the Ministry of Foreign Affairs has offered 31 participants from African countries (Ethiopia, Ghana, Kenya, Malawi, Tanzania, Uganda, Zambia and Zimbabwe) a one-week training in the maintenance and administration of tax treaties.

The training was held in the IBFD Amsterdam venues from 29 September to 3 October 2014.

The lectures and seminars were delivered by the IBFD senior tax experts, most of whom have been working for various tax administrations in countries that include Tunisia, Venezuela, Mexico, Morocco, Zambia and Chile. The objective of the training was to give the participating revenue authorities insights into the importance of maintaining tax treaties up to date and applying them appropriately.

Unless they are kept up to date, older treaties may lead to losses in revenue due to companies' aggressive tax planning. The training therefore included theories and practical application of the concepts and principles of international tax law, and on how these concepts are applied in business structures.

International tax law issues were contemplated in the light of the allocation of taxation rights in a treaty situation while taking into account national legal obligations and possibilities.

Since the programme was designed to provide the participants with the skills to manage international tax situations, it included broad discussion of different approaches of national tax systems to the most important issues and how to apply double taxation treaties and measures against tax avoidance in practice. In addition, the lecturers also presented commonly used tax planning structures and trends in tax planning.

The training closed with a coached per-country analysis of selected tax treaties as compared with respective domestic legal provisions. The outcome of the analysis was presented by the countries' delegations in a plenary session.

In their evaluation of the programme, the tax authorities expressed a strong interest in a follow-up programme. Therefore, the Netherlands Government is willing to provide further support to the partner countries by making available the IBFD expertise and training.

For further information please contact Anna Bardadin at **a.bardadin@ibfd.org**