

## **Report by Frank L. Brunetti on the Revision of the Manual for the Negotiation of Bilateral Treaties between Developed and Developing Countries**

1. Mr. Bernell L. Arrindel presented the update of the work to revise the Manual for the Negotiation of Bilateral Treaties between Developed and Developing Countries. Mr. Arrindel noted that the revision of the Manual is a high priority as stated by Alexander Trepelkov, Director of the Financing For Development Office. Mr. Arrindel introduced Prof. Jon E. Bischel and Prof. Frank L. Brunetti, both of whom have been working on the revisions to the Manual.
2. Prof. Bischel, who had been a member of the Secretariat at the time the first Manual was written, gave a brief history of the Manual and explained its function; he noted that the Manual is to be used in conjunction and as a compliment to the UN Model Treaty and the Commentaries.
3. Prof. Brunetti through his power point presentation provided an update of the work and proceeded to outline the portions of the Manual which are recommended to be kept; portions to be removed and new portions to be added. Prof. Brunetti stated that the 2003 Manual can be found on the website as well as the text of "Basic Approaches to Treaty Negotiations" and some portions of the appendix, and suggested treaties.
4. Part One of The revised Manual will retain the following discussions: "International Double Taxation"; "International Tax Evasion and Avoidance" and will update and revise "Procedural Aspects of Treaty Negotiations." There were several comments on these topics, especially regarding Procedural Aspects of Treaty Negotiations. It was suggested that this topic be enlarged to include a discussion of practical logistics of treaty negotiation including a focus on strategies for negotiating treaties and negotiating from a weak position.
5. In addition to updating these topics it was suggested that consideration be given to adding a discussion of the economic reasons for entering into a tax treaty with another state.
6. Part Two will be replaced with the proposed new section entitled: "Basic Approaches to Treaty Negotiations." Basic Approaches to Treaty Negotiations, initially drafted by Prof. Bischel, is similar in format to the current version of Part Two. The new version will replace "Observations" (found in the 2003 Manual) with "Discussions which contains basic advice on the purpose of the article and the different approaches found in the UN and OECD models.
7. Prof. Brunetti explained the structure of the remaining portion of the revised Manual. Part Three will include a number of suggested topics, including: Procedural Aspects of Mutual Agreement Provided for in Article 25; Suggested Arrangements Between Competent Authorities Regarding the Exchange of Information; and a discussion of the proposed Code of Conduct. The 2003 version of the Manual contains a discussion of "Suggestions for Transfer Pricing." It was explained that as this topic will be incorporated into the Transfer Pricing Manual being written by that committee; the Manual will only make reference to the Transfer Pricing Manual.

Part Four will be the Appendix for Special Consideration which will provide a repository for articles that articulate discussion items that have been raised in discussion or a review of the model. These topics would be those that would have a high level of interest to member countries and would be useful to such countries in negotiating a tax treaty. Suggested Articles include a discussion of Islamic Financial Instruments; Improper Use of Tax treaties; Dispute Resolution; Attribution of Profits, and if funding can be obtained and update of the Study of the Model Treaty in Practice (currently found in the 2003 version). The Manual will also contain a list of relevant governmental web site and useful public domain web sites.

8. The chair opened the discussion and from the comments received the following suggestions were made: add a definitive table of contents; enlarge the discussion of practical logistics of treaty negotiation including a focus on strategies for negotiating treaties and negotiating from a weak position; instead of including entire DTA's only include relevant portions of representative treaties to illustrate the point being made; create a "Wiki" site for exchange of dialogue; update the discussion on Article 25; discuss how to put a treaty in force; add a discussion in Part One of the economic incentive for entering into a DTA; refine the website list for approve government websites and public domain site; Update the discussion of Article 7 needs to include the OECD AOA.

9. The following time lines were introduced by Mr. Arrindel for the Completion of the Manual:

- April 1, 2011 for Comments
- April 1- July 31, 2011- Working Group Meeting(s)
- August 1, 2011 Final corrections changes, etc.
- October 1, 2011 Completion of the Manual
- Seventh Meeting- Approval of Manual by the Experts
- March 2012 Publication

Mr. Arrindel asked the Experts to provide their written comments to Michael Lennard as soon as possible and in any event no later than April 1, 2011.

Respectfully,

Frank L. Brunetti