

6. The Subcommittee intends to meet again before the April 2020 meeting of the Committee. Based on the work completed in April and October 2019 meetings and on the written comments already received and those that will be sent after the nineteenth session, the Subcommittee will then revise and complete the Guidelines for final discussion and approval at its twentieth session in April 2020.

Executive Summary

The practice of granting tax exemptions with respect to official development assistance (ODA) projects is widespread among developing countries. A recent survey shows that such exemptions are most often provided with respect to value-added taxes, customs duties as well as corporate taxes, personal income taxes and payroll taxes, including taxes withheld at source. There are no reliable estimates of the overall tax revenues foregone through such exemptions.

The Addis Ababa Action Agenda, which includes a comprehensive set of measures aimed at addressing the challenges of financing the 2030 Sustainable Development Goals, includes a government-to-government aid, beginning with renouncing repayments of value-added taxes

This note includes a set of Guidelines that were developed by the United Nations Committee of Experts on International Cooperation in Tax Matters in light of this commitment. The Guidelines seek to facilitate the consideration of whether or not tax exemptions should be requested with

4. Tax⁵ exemptions for various transactions under ODA projects

The survey also indicates that in most countries, there are no published estimates of the tax revenues foregone through these exemptions.⁹

6. The tax rules applicable in developing countries will often provide for an exemption without the need for a specific exemption for ODA projects. For example, a non-resident importing goods which will be taken out of the country after being used for a project might qualify under the terms of a general customs regime for temporary imports. Also, a non-resident which provides services p4.9e3d by a foreign donor without having a permanent establishment in the developing country where the work is carried on might not be subject to income or corporate taxes under the income tax legislation of that country or under the terms of a generally applicable tax treaty, ag4.9e3n without specific reference to the ODA project.

7. Each donor is of course free to establish the conditions under which it is willing to provide ODA. Some donors may be concerned that the imposition of taxes would decre4.9ese resources av4.9e3lable for development activities and that it would be diff.9e3cult to rally domestic support for payment of taxes.

8. Donors should recognize, however, that tax exemptions cre4.9ete significant diff.9e3 for developing countries and run counter to the objective of strengthening domestic resource mobilisation. One of the four principles for strengthening the effectiveness of development cooperation that were endorsed in 2011 by 161 countries through the Busan Partnership for Effective Development Co-operation is that co-qr gtcvq"öinvestments and efforts must have a lasting impact on eradicating poverty and reducing inequality, on sustainable development, and on *ties, aligned with the priorities and policies set* [emphasis added].¹⁰

9. Donor countries, their 4.9e3d agencies and the international organizations through which ODA is provided to a country should therefore refr4.9e3n from requesting exemptions from tax for transactions relating to ODA projects that country except to the extent that, and only 4.9es long as, the rules in the recipient country for taxing ODA-related transactions fail to comply with internationally recognized tax principles or in exceptional c4.9eses where serious concerns with the payment of tax to that country result from a review of the governance structure, tax system or tax administration that country.

SCOPE AND PURPOSES OF THE GUIDELINES

10. The Guidelines deal exclusively with the tax tre4.9etment ODA provided by governments (including governments of political subdivisions and local governments) or their agencies, whether the ODA is provided directly or hrough international organizations (these governments, agencies and international organizations being collectively referred to as öfqqtuö+. While many of the recommend4.9etions formulated in the Guidelines could possibly

9 Id, p. 15.

10 Communiqué of the *Busan*

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d) *Indirect taxation personal property and household goods of workers*

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e) *Indirect taxation temporary admission*

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EXPLANATIONS ON THE GUIDELINES

A. *General considerations*

16. These reasons, however, must be reviewed in light of global efforts to strengthen domestic resource mobilization and, in particular, of the commitment, included in the Addis Ababa Action Agenda, to consider not requesting tax exemptions on goods and services delivered as government-to-government trade.¹

17. Concerns that a donor may have about public expenditure management in the recipient country may be warranted in some countries. However, a number of recipient countries have made substantial progress in this area. This suggests that, to the extent that the main concern of a donor is weak public expenditure management (e.g. a donor may feel that any direct budgetary support through the payment of taxes would be vulnerable to corruption and mismanagement), this concern can be addressed on a case-by-case basis by reviewing the situation in the particular countries to which the donor is providing ODA. A review of the public expenditure management framework and an assessment of the performance of a tax administration of a recipient country could convince donors that this concern has been satisfied. Such a review could take advantage of the initiatives currently under way in a number of countries with the participation of the IMF, World Bank and other agencies.

18. Support for domestic resource mobilization efforts has become an increasingly important

a typical issue is whether a particular contractor pays tax on its income from a project. The amount of tax at stake is relatively contained. However, in the case of indirect taxes, goods that have entered the country on an exempt basis can find their way into domestic commerce. If there is fraud in customs, all kinds of goods might be allowed to enter without paying VAT or customs duty, even though these goods should not actually qualify for exemption. The volume of goods involved might be several times the amount of the actual assistance. Depending on how the exemption is administered, fraud may well also arise from exempting local purchases from VAT. If the contractor is allowed to make purchases VAT-free upon presentation of an exemption card, the exemption is likely to be abused. Given the significant size of ODA, this potential for tax fraud can have a significant adverse effect on the domestic tax system.

22. Second, tax exemptions impose administrative costs on the tax administrations of recipient countries which need to keep track of the various exemptions provided and implement them. This difficulty is amplified by the diversity of the practices and expectations of the multiple donors that recipient countries may need to deal with. The administrative burden and the risk of fraud can vary depending on the way that exemptions are structured. Reducing this burden and risk of fraud for recipient countries is one of the factors that have motivated some donors to review their policy concerning tax exemptions.

23 Third, the granting of tax exemptions can raise legal issues. In some countries, there is no proper legal basis for exemptions, i.e. they might be based on agreements that do not have the force of law. Even where a duly ratified treaty or law establishes exemptions, there are often difficulties of interpretation arising from vague drafting, particularly where the exemptions are provided in laws separate from, and not properly integrated with, the tax laws. These difficulties are compounded where the Ministry of Finan

would be the creation of VAT refund claims on the part of suppliers, which places a strain on weak tax administrations). There will also be substantial costs in terms of administrative costs (e.g. the need to check VAT refund claims, which may prohibit financing of taxes, which will require checking reimbursable expenses to see whether they include taxes; agreements need to be drafted and contracts reviewed). Where problems arise, human resources have to be devoted to deal with them. In other words, the requirement to operate a special regime, as compared with the generally applicable tax regime, makes the contracts in question more expensive to administer.

26. Finally, granting tax exemptions to any market participants always runs the risk of creating pressures for further exemptions, whether directly as a means of alleviating competitive distortions that the initial exemption created or indirectly by creating a precedent that others can call on. Many recipient countries already find it hard to resist the pressure to grant specific tax exemptions when prospective private sector investors ask for such exemptions as an encouragement to invest on their territory. In addition, some recipient countries have complained that even where a donor agrees to finance the payment of tax with respect to a specific ODA project, consultants who are bidding to execute the project are requesting tax exemptions simply because they have obtained exemptions for similar projects and wrongly assume that being exempt from tax

other countries, such as the United Kingdom, Norway, the Netherlands and Belgium, have adopted a similar policy.

29. Guidelines 1 and 2 endorse that approach. They recognize, however, that in some cases, there may be valid reasons for insisting on tax exemptions despite the various developments and considerations described above. This would be the case to the extent that the tax rules of the recipient country

37. Given the technicality of tax legislation, the special procedural rules that might apply to the adoption of such legislation and the need to take account of administrative tax concerns, it is important that officials representing the tax authorities of a recipient country be involved in the negotiation and drafting of any specific tax provision dealing with ODA projects even if another ministry or government agency is taking the lead in the negotiations. Both the recipient countries and the donors should therefore insist that officials representing the tax authorities of the recipient country be involved in the negotiation and drafting of these provisions.

38. Whether these officials should come from the Ministry of Finance or the tax administration of the recipient country or from both is a matter that should be decided by that country taking into account the various responsibilities that have been granted to its tax administration. The officials that should be involved are those that would normally be responsible for designing tax rules applicable to foreign taxpayers. In many cases, these would be officials of the Ministry of Finance. In some jurisdictions, however, the tax administration has the responsibility of designing and implementing tax legislation; in such a case, it would seem appropriate to have representatives from the tax adm

granted, for example, through specific exemptions in domestic law directed to international assistance, through bilateral agreements, letters or memoranda of understanding.

41. In many countries, however, the constitution or the law impose restrictions as to how tax provisions may be adopted. Frequently, there will be rules according to which any tax charge or tax exemption must be authorized by law in order to be enforceable. Such rules will often apply regardless of the instrument in which the tax exemption is granted (e.g. a bilateral treaty, memorandum of understanding or any form of bilateral agreement).

42. There have been cases where tax exemptions included in a bilateral agreement concluded between a donor and the government of a recipient country have been found not to be enforceable because such rules had not been complied with. It is therefore necessary to ensure that any agreements providing for tax exemptions with respect to an ODA project will be implemented in accordance with these rules. In cases where tax exemptions for transactions related to ODA projects are contemplated, the parties are encouraged to use legal instruments that support the rule of law in recipient countries by:

Making sure that the exemption is provided by law or, if provided under agreements, that the agreements are authorized by law;

Identifying with specificity the transactions benefiting from exemption, the applicable taxes, and the conditions for benefiting from exemption.

43. Participation of the appropriate officials from the Ministry of Finance or tax administration in the negotiation of these exemptions will often be the best way of ensuring that this is done.

44. Giving force of law to exemptions with respect to subnational taxes may require the involvement of subnational governments. It should not be assumed that generally-worded exemptions apply to subnational taxes.

45. The transparency of the legal provisions granting tax exemptions is crucial. The parts of any agreement, letter, memorandum of understanding or other document that relate to the tax treatment of transactions related to ODA projects should be made publicly available. This should be agreed to by the recipient countries as well as the donors.¹² For example, the United States has long followed the practice of publishing the treaties and agreements through which it secures tax exemptions for the ODA that it provides, which facilitates the identification of potential risks of tax avoidance.¹³

12 ATAF suggests that the publication of the entire ODA project agreement, and not only the parts thereof dealing with taxation, could be done directly by donors or through a central repository such as the one through which the International Aid Transparency Initiative (IATI) already provides information on ODA projects. See *The Taxation of Foreign Aid* supra note 6, at

46. Recipient countries should make publicly available the legal provisions granting tax exemptions to ODA projects. Similarly, the recipient countries should contribute to the public disclosure of the tax exemptions that are included in treaties.

47. Also, to provide the transparency and information needed for policy making and public discussion, recipient countries should

checks) that are both more efficient and more trade-friendly. Experience shows that reimbursement systems can be successfully implemented, leading in some cases to an increase of government revenue.¹⁵

63. When implemented and administered properly, the voucher system used by some francophone African countries¹⁶ can also be an effective method for eliminating or greatly reducing abuse and revenue loss from this type of exemption. Under this system, import duties and taxes in connection with qualifying projects are payable by way of treasury credit vouchers issued by the government. ODA public procurement bids must be submitted on a tax-inclusive basis, which thus requires the bidders to carefully plan and calculate their projects. When the contract is assigned, treasury vouchers are issued to the contractor up to the forecasted amount of duties and taxes.¹⁷ Any excess tax burden falls on the contractor. The system thus has a built-in control mechanism: bidders will be careful not to overstate their tax forecast to obtain the contract, while an understatement leaves the contractor to bear the excess tax burden when the contractor wins the bid. In addition, it allows the government of the recipient country to keep track of foregone amounts of duties and taxes.

64. While this system is straightforward for import duties and taxes and for single-stage domestic sales taxes, it is more complex for domestic VAT (i.e. VAT on domestically sourced supplies, other than import VAT). Indeed, the amount of domestic VAT for which exemption and thus treasury vouchers may be claimed is not necessarily equal to the amount of output VAT (i.e. the total consideration for the supply multiplied by the VAT rate) but is the net amount of VAT due (i.e. the output VAT minus the input VAT on domestically sourced supplies or taxed imports), the forecasting of which may prove to be more difficult.

65. Contractors under ODA projects for which duty and tax exemptions are available thus have an incentive to insist on outright VAT exemption for their domestically sourced supplies, and thus undermine the VAT system of input tax credits. Indeed, domestic suppliers further down the supply chain will also claim exemption, thus leading to a chain of exemptions. Another potential weakness of the voucher system may be the risk of forgery of vouchers, although with proper controls in place this risk should not be too difficult to manage.

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66. Guideline 8 also recognizes that whatever system is used, the tax administration of the recipient country should ensure that proper administrative procedures are applied to ensure that goods and services on which indirect tax will be relieved are used for the purpose of the relevant project. Even if a list of exempted goods and their quantity is provided to the tax administration, the tax administration may find it problematic to monitor the quantity of such goods that are eligible for exemption. Fuel taxes (e.g. VAT and excise taxes on fuel) are particularly prone to abuse; while exemptions from such taxes are frequently requested, recipient countries should be particularly wary of granting such exemptions.

67. In the case of imported goods, such procedures would typically include

Establishing a clear and strict authorization procedure to identify the importer, the type and quantity of the goods and the exempt use for which they will be imported;¹⁹

Verification upon importation, to reconcile the goods, the import declaration and supporting documents presented to customs with the prior authorization; and

Post-clearance controls to verify whether the imported goods are put to, and are not diverted from, their exempt use.

68. In the case of imported goods, the use of an automated customs management system, such as the ASYCUDA²⁰ developed by UNCTAD, will help administer any available exemptions while facilitating trade by reducing transaction time and costs.

69. Most agree

70. Under most tax systems, persons that make certain payments to resident or non-resident taxpayers are required to inform tax authorities about these payments and, in some cases, to withhold tax on these payments. This is typically the case for the payment of remuneration to employees and subcontractors. Regardless of whether tax exemptions for transactions related to ODA projects are granted or whether they are themselves exempt from tax for other reasons, donor countries, their aid agencies as well as international governmental organizations through which ODA is provided should assist the tax authorities of recipient countries by complying with the applicable information and withholding tax requirements with respect to payments that they make to taxable entities in relation to these ODA projects.

B. Internationally-recognized tax principles applicable to ODA projects

a) Income taxation employment remuneration

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71. Guideline 11 is based on the provisions of paragraph 1 of Article 19 of the *United Nations Model Double Taxation Convention between Developed and Developing Countries* (the UN Model)²¹ and the *OECD Model Tax Convention on Income and on Capital*²² (OECD Model). These provisions are found in almost all bilateral tax treaties currently in force. As noted in the *Equo o gpvct { "qp'yj gug'bo qf gnu'õ]u_ko krcr'r tqxkukqpu'lp'qrf "dkrcvgtcrléqpxgpvkqpu'y gtg'htco gf 'lp"* order to conform with the rules of international courtesy and mutual respect between sovereign Ucvguö³ The principle that a state should not

72. Nothing in these Guidelines affect the exemptions to which various members of diplomatic missions or consular posts are entitled under the general rules of international law or under multilateral instruments such as the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations*. These exemptions are applicable regardless of whether or not specific exemptions are granted with respect to government employees providing services in the context of a particular ODA project.

73. Like paragraph 1 of Article 19 of the UN Model and OECD Model and like the two Vienna Conventions mentioned in the previous paragraph, Guideline 11 provides an exception that allows a recipient country to tax the remuneration paid to local personnel who are permanent residents or nationals of that country. That exception is intended to ensure that locally-recruited personnel (e.g. security guards hired

be entitled to the exemption referred to in Guideline 11 and should be subject to the normal taxation rules of the recipient country, subject to this exemption for short-term employment activities.

77. Since the wording of this exemption is derived from that used in tax treaties, it should be interpreted in the same way. Vj g'tghgt gpeg"vq"õtgukf gpvö"uj qwr f"vj gtghqtg'dg'i kxgp"vj g'o gcplpi " that it generally has for the purposes of tax treaties and the interpretation of the 183-day rule should be in accordance with the guidance found in the Commentary on the UN Model and OECD Model.

b) Income taxation profits and payments to foreign enterprises

85. Supplies by donor countries, international governmental organizations and agencies thereof to respond to acute humanitarian crises constitute a subcategory of ODA projects that has the following characteristics:

to be effective, such consignments must be delivered rapidly to their ultimate recipients, i.e. those affected by the crises, and

the case for relieving such supplies from taxes and duties is particularly strong, as there is little economic sense in taxing such supplies (the recipients do not have ability-to-pay), and the revenue risks involved in exempting such supplies are equally small.

86. The existence of transparent and harmonized rules regarding the tax treatment of emergency aid that would already be in place before a crisis occurred is paramount for swift and efficient donor intervention.

87. O cp{ "eqwptkgu"j cxg"cf qr vgf "f qo guke"cz"r tqxkukqpu'tgi ctf kpi "öt grgh"eqpuki po gpwö." but there is substantial variation in their scope of application, both with respect to the type of taxes and with respect to the type of supplies.

international instruments in this area are managed by the World Customs Organization

Countries may find it useful to refer to the following definition of "relief consignments" 1 of the *UN Model Agreement on Customs Facilitation in International Emergency Humanitarian Assistance*:

Accelerated and simplified clearance procedures for relief consignments should be provided²⁹ so that customs clearance of relief consignments is carried out as a matter of priority and simplified and expedited clearance procedures can be used, such as the lodging of a simplified, provisional or incomplete declaration, pre-arrival declarations, clearance outside normal hours and without normal charges as well as examination/sampling in exceptional circumstances only. Such clearance procedures should be provided for in the customs legislation and the necessary procedures should be planned for in advance and documented so that they can be implemented in short order.

The exemption from duties, taxes and restrictions applicable provided for relief consignments should include³⁰ a waiver from economic export prohibitions or restrictions, and export duties and taxes otherwise payable; as well as a waiver from import prohibitions and restrictions, and import duties and taxes, for relief consignments received as gifts by approved organizations for use by or under the control of such organizations, or for distribution free of charge by them or under their control.

Goods imported for humanitarian purposes, i.e. medical, surgical and laboratory equipment and other relief consignments that do not qualify for the exemption for relief consignments, should be granted temporary admission with total relief from import duties and taxes, and without the application of economic import restrictions or prohibitions;

- Tgrkgh'eqpuki po gpw'lij qwf 'dg'f kur cvej gf 'vq'r gtuppu'cr r tqxgf 'd{ 'vj g'eqo r gvvpv' cwj qtkkgu'lp'vj g'vgttkqt{ "qh'vgo r qtct{ "cf o kulkp0

92. In addition to the general recommendations regarding accelerated and simplified clearance, whenever possible, an inventory of the goods together with a written undertaking to re-export should be accepted for medical, surgical and laboratory equipment in lieu of a customs document and security.

93. Temporary admission of relief consignments should be granted without a Customs document or security being required. However, the Customs authorities may require an inventory of the goods, together with a written undertaking to re-export.

94. The time period for temporary admission should be determined in accordance with the needs for medical, surgical and laboratory equipment; and should be at least twelve months for relief consignments.

95. There are currently no international standards with respect to the exemption of relief consignments from domestic indirect taxes. To avoid distortion, it would be appropriate to grant the same favorable tax treatment to relief consignments that are sourced or supplied to a foreign country, aid agency or international governmental organization for use in response to a humanitarian crisis under the same conditions and circumstances as imported relief consignments would enjoy pursuant to the instruments discussed above.

96. Guideline 16 therefore recommends that a similar exemption be granted with respect to domestically supplied goods, and services closely connected with such supplies, that would ó if imported ó s wcnh{ 'cu'ótgrkgh'eqpuki po gpw'ö'qt "öggqf u'hqt'j wo cpkctkcp'r vtr quguö'hqt'ko r qtv' duty and tax exemption on temporary admission. Such exemption from domestic transfer taxes could be achieved either on the side of the supplier (by zero-rating qualifying domestic supplies) or on the side of the purchaser (by granting refund of domestic taxes paid). From an administrative point of view, the latter method is preferred as it allows for tighter controls. Also, the foreign a country, aid agency or international governmental organization that would benefit from such an exemption from domestic transfer taxes should be identified beforehand in the same manner as beneficiaries of import duty and tax exemption for such relief consignments.

~~97~~ The VAT legislation of some countries already provide that type of exemptions.³¹

d) *Indirect taxation personal property and household goods of workers*

98. It is an internationally recognized³² practice not to impose import duties and taxes on personal effects of non-resident travellers subject to specified limits as to type and quantity of the goods, and the time-limit during which such goods may stay in the country concerned. This is a particular form of temporary admission. In addition, persons who move their place of residence to a country are often allowed to import their household goods into that country free of import and export duties and taxes, again subject to limitations as to type and quantity of the goods concerned;³³ that exemption is specifically recognized in various international instruments for diplomats, consular personnel and staff of international organizations.

99. The situation of non-resident workers³⁴ dispatched to a recipient country in the context of an ODA project does not necessarily fall into any of these broad categories of exempti

103. The benefits of not imposing import duties and taxes on goods which are intended to stay only temporarily and for a particular purpose in a given country are widely recognized both by traders and by customs authorities. There are strong economic, social and cultural reasons for not imposing the import duties and taxes that would otherwise be due, for instance to allow traders to test foreign goods before they decide to import them, or to stimulate exchanges in the cultural, educational and scientific area. The customs procedure that provides for relief from import duties and taxes on goods imported for a specific purpose and on the condition that they be re-exported in the same state is commonly known as temporary admission.

104. Temporary admission plays a central role in the tax treatment of ODA projects, as many of the goods that are imported for the purpose of carrying out such projects are not intended to stay in the recipient country beyond the completion of the project (e.g., construction tools and equipment imported for the purpose of carrying out a construction project).

105. Most countries have provisions on temporary admission in their domestic legislation. In addition to these domestic law provisions, a number of countries have entered into bilateral assistance agreements with donor countries, international aid organizations or other donor or aid agencies which contain provisions on temporary importation. These agreements often show differences, minor or major, between them and compared to the corresponding domestic law provisions. Furthermore, by their nature, such agreements only cover activities by the contracting donor country, organization or agency, and their facilities are thus not available to other donors. Finally, such agreements are usually not published or publicly disseminated, or at least not systematically or in the same way as ordinary tax laws and regulations, thus lacking transparency and adding complexity.

106. There are also a number of multilateral agreements and conventions regarding temporary admission. The main instruments in this respect are the previously-mentioned Istanbul Convention³⁶ and Chapter 1 on Temporary Admission, Specific Annex G to the Revised Kyoto Convention. The Revised Kyoto Conventions contains the basic provisions for all customs procedures, including the fundamental principles concerning temporary admission. The Istanbul Convention, on the other hand, contains more details regarding specific categories of goods, and regarding customs documents and guaranteeing associations. It is also more liberal than the Revised Kyoto Convention in that it also provides for relief from economic prohibitions and restrictions for temporary admission goods;³⁷ specific Annexes B.1 to E of the Istanbul Convention include the list of goods that should be granted temporary admission with total relief from duties and taxes.

36 The Istanbul Convention combines into a single instrument all the existing provisions on temporary admission in a multitude of earlier conventions and agrego gpw"qp"j g"CVC"öCVCö"ku"e"eqo dlpcvkp"qh" the Frepej "öadmission temporaireö"cpf "j g"Çpi rkuj "övgö r qtct { "cf o kuukqpö-"ectpgvly kj "tgur gev"vq" specific types of goods. The ATA carnet system is one of the most important internationally accepted systems for the movement of goods under temporary admission through multiple Customs territories. It relies on an international chain of guaranteeing associations that provide the security for any duties and taxes which may become liable on the temporarily admitted goods.

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107. To ensure maximum transparency, predictability and harmonization, it i

ANNEX

WRITTEN COMMENTS RECEIVED ON NOTE E/C.18/2019/CRP.6

A. Comments from the African Tax Administration Forum

1. Paragraph 1(28) of the Commentaries to the OECD Model Tax Convention, indicates that a permanent establishment can be deemed to exist only if the place of business has a certain degree of permanency. The alluded level of permanency is where activities are performed in a country for a period of more than 6 months (183 days). The paragraph, however, acknowledges that a place of business may constitute a permanent establishment even though it exists for a shorter period of time because the nature of the business is such that it will only be carried on for that shorter period of time. The paragraph continues to provide examples of such exceptional cases as:-

where the activities were of recurrent nature; in such cases, each period of time during which the place is used needs to be considered in combination with the number of t

permanent establishment status is explicitly left as 183 days w

B. Comments from Titia Stolte-Detring

Executive Summary, paragraph 5 (p. 2) and Part B of the Guidelines, introduction (p. 9)

11. It is suggested that donor countries should refrain from claiming tax exemptions if they have sufficient confidence in the governance structures of a **particular** developing countries. To my knowledge development aid is realized on the basis of framework agreements which are applicable for a long period of time and which have the legal quality of government agreements. Those agreements often follow a model a donor country has developed, that leaves no room for an individual analysis of circumstances in the recipient country. Since they are applicable for an undefined period of time (similar to DTAs) they would need renegotiation in order to give up tax exemption rules.

12. It is suggested, that donor countries may (only) ask for tax exemption, if and to the extent that tax rules in the recipient country a

b) is n

Argument- the AAAA already states donors should consider not requesting exemptions. If a donor is investing in a water project there isn

((the Guidelines recommend that recipient countries ensure that their tax treatment of transactions relating to ODA projects be consistent with these internationally recognized tax principles.)) Guidelines 11 to 18 describe these principles in relation to the following:

Income taxation employment remuneration

Income taxation profits and payments to foreign enterprises

Indirect taxation humanitarian crises

Indirect taxation personal property and household goods of workers

Indirect taxation temporary admission

34. [As regards the ninth paragraph of the Executive Summary:]

*The Guidelines also address the situations where specific exemptions are requested for ODA projects. In that case, the Guidelines recommend that officials from the Ministry of Finance **and** or the tax administration of the recipient country should be involved in the negotiation and drafting of these exemptions and that the recipient country should ensure that all legal requirements necessary to give force of law to these exemptions are satisfied. The Guidelines also provide that the relevant parts of any document providing for such exemptions be made publicly available. They also stress the importance of forecasting, and doing an analysis of, the foregone tax revenues resulting from these tax exemptions as well as using mechanisms that minimise administrative burdens and reduce fraud in relation to the application of these exemptions. Regardless of whether or not tax exemptions for*

[Suggest to add öitsö before activities.]

37. [As regards paragraph 9:]

9. Donor countries, their aid agencies and the international organizations through which ODA is provided to a country should therefore refrain from requesting exemptions from tax for transactions relating to ODA projects in that country ((except to the extent that, and only as long as, the rules in the recipient country for taxing ODA-related transactions fail to comply with internationally recognized tax principles or in exceptional cases where serious concerns with the payment of tax to that country result from a review of the governance structure, tax system or tax administration that country.))

Suggest elimination of the sentences in brackets and same be replaced with references to domestic resource mobilization, the Addis Ababa Agenda and the SDGs.

38. [As regards paragraph 10:]

10. The Guidelines deal exclusively with the tax treatment of ODA provided by governments (including governments of political subdivisions and local governments) or their agencies, whether the ODA is provided directly or through international organizations (these governments, agencies and international organizations being . (While many the c-64(omplym(e)4(rnmnd)-3(ons)-33040r)-m-2

contractor

allow financing of reasonable, non-discriminatory tax costs. Recipient countries do not have to provide exemptions for Bank-financed projects, where their taxation system has been determined to be a reasonable one for purposes of this policy. The determination by the World Bank as to which taxes are treated as costs that can be financed by loans is made on a country-by-strategy.)) Thus far, experience with applying the policy shows that in only very limited cases are taxes found to be unreasonable and therefore ineligible for Bank financing. The net result is that virtually all taxes have been considered as eligible for financing ((of course, if a country were to introduce an unreasonably high tax, the Bank could consider it ineligible))). The Inter-American Development Bank (IDB) and Asian Development Bank (ADB) subsequently adopted similar policies. Similarly, the French Development Agency (Agence Française de Développement or AFD) has for a number of years included in certain aid agreements the financing of taxes. Development agencies in other countries, such as the United Kingdom, Norway, the Netherlands and Belgium, have adopted a similar policy. r policy. r polincluded in

assistance project.)) It may also suspend disburs

Suggest the rewording here. Suppose a recipient country follows all these rules but is the #1 corrupt country or vice versa. Flagging this as a must with the use of the word ensure is not balanced especially when the donors may or may not. So if a country withholds on the salary of a GIZ consultant then the donor country should insist on exemptions although the withholding requirement is in their tax law while richer countries maybe withholding on similar type salary as is the case with Australia and the IMF.

55. [Suggests the following change as regards paragraph 38:]

*38. Whether these officials should come from the Ministry of Finance or the tax administration of the recipient country or from both is a matter that should be decided by that country taking into account the various responsibilities that have been granted to its tax administration. The officials that should be involved are those that would normally be responsible for designing tax rules applicable to foreign taxpayers. In many cases, these would be officials of the Ministry of Finance. In some jurisdictions, however, the tax administration has the responsibility of **ADVISING**, designing and implementing tax legislation; in such a case, it would seem appropriate to have representatives from the tax administration involved in the negotiation and drafting of provisions dealing with the tax treatment of ODA projects. Regardless of which tax officials are involved, it will be important for officials from the Ministry of Finance and the tax administration of the recipient country to liaise and cooperate as regards both the negotiation, **DESIGN** and the implementation of these provisions. Also, since the tax exemptions might cover different types of taxes that may be administered by separate parts of the tax administration, it would be necessary for the recipient country to ensure that all relevant parts of its tax administration are consulted.*

56. [Suggests the following change as regards paragraph 39:]

*39. Guideline 3 also provides that the provisions granting tax exemptions to donor countries, their aid agencies as well as international governmental organizations through which ODA is provided should not be interpreted as extending to other parties, such as **CONTRACTORS AND** subcontractors, unless such extension is clearly provided for. Donor countries, their aid agencies as well as international governmental organizations through which ODA is provided should make sure that the private parties involved in the implementation of ODA projects do not wrongly assume that they are entitled to the same exemptions and that these private parties do not try to obtain such exemptions from the recipient countries.*

57. [Suggests the following change as regards paragraph 50:]

*50. Guidelines 7 to 9 provide guidance as to how this may be done in the area of indirect taxes and customs duties. As regards reliefs related to direct taxes, requiring taxpayers to declare the income received that is subject to an exemption and to identify the provisions under which the exemption is claimed facilitates risk-management of tax audits as well as the calculation of the amount of foregone tax revenues attributable to this type of tax exemption. **ALSO TO ASSIST IN THE DIRECT TAXES SO AS TO MINIMIZE TAX AVOIDANCE BY CONSULTANTS.***

58. [Suggests the following change as regards paragraph 54:]

54. Especially for materials that can easily be diverted to the local market, such as raw materials (e.g., construction materials) and other commodities (e.g., fuel), the agreement, or an annex thereto, should determine maximum quantities; at the very least,

*the agreement should provide for a mechanism to determine such maximum levels in common accord and prior to the introduction of the goods into the recipient country. **IT IS ADVISABLE THAT SPECIFICALLY FUEL AND OTHER PETROLUEM PRODUCTS NOT BE COVERED UNDER ANY EXEMPTION GIVEN THE HIGH COMMERCIAL NATURE OF SUCH PRODUCTS AND THE DISTORTIONARY IMPACT ON THE LOCAL MARKET.***

59. [Suggests the following change as regards paragraph 61:]

*61. From an administrative perspective, a system where the exemption is processed manually at the time it is requested should be discouraged. A reimbursement or voucher method and the use of an automated **TAX AND** customs management system are generally to be preferred and Guideline 8 recommends the use of these methods.*

60. [Suggests the following change as regards paragraph 73:]

*73. Like paragraph 1 of Article 19 of the UN Model and OECD Model and like the two Vienna Conventions mentioned in the previous paragraph, Guideline 11 provides an exception that allows a recipient country to tax ~~the country of tax origin~~ **Guideline 11 provides an exception that allows a recipient country to tax the country of tax origin***

*established international practice that specifically deals with import duty and tax exemption for **IMPORTED** personal effects and household goods of persons who are not travellers but at the same time do not necessarily intend to relocate their place of residence, this Guideline therefore recommended that such exemption be generally provided. This should be done subject to the following conditions:*