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ASSESSMENT OF THE EXISTING NIGERIAN TAX TREATIES: ISSUES ARISING FOR CONSIDERATION IN REVISING.

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The Nature of Treaties

Treaties are basically agreements between States in written form, governed by International Law and regulating relations between parties to them. Thus, treaties can be considered as "contracts writ large" since they are essentially bargains or accords of wills of the parties or what the municipal lawyers would term a meeting of the minds or ***consensus ad idem.***

Nigeria has a double tax treaties with the following countries to date.

To-date, Nigeria has concluded agreements with UK (1988), France (1991), The Netherlands (1994), Canada (1993), Belgium (1990), Romania (1993), Pakistan (1990). Others are the Philippines, Czech and Slovak Republics. It has also signed agreements with South Africa, Sweden and China which are awaiting ratification. Italy and Nigeria signed an agreement limited to air transportation and shipping in 1977. For convenience, reference to a particular tax treaty which Nigeria has entered into with another country is indicated by the name of the relevant country plus the type of treaty. For instance, the Nigeria/UK Double Taxation Agreement is indicated merely as UK DTA.

In general terms, therefore, the purposes of entering into a double taxation agreement can conveniently be classified as follows:

1. avoidance of double taxation:
2. certainty of tax treatment;
3. grant of tax treaty benefit;
4. lower compliance cost;
5. prevention of fiscal evasion and avoidance; and
6. cooperation in tax matters

a. exchange of information;

b. non-discrimination; and

c. mutual agreement procedure.

Legal Counseling in Relation to Treaty-making

While states are duty bound to implement treaties in good faith, in compliance with the ***pacta sunt servanda*** maxim, that is as far as International Law goes. It leaves states with the choice of means of implementing their treaties. It is for this reason that state practice evinces a multiplicity of models in relation to both treaty-making and treaty implementation. However, starting with treaty-making, it should be stated that the process can be broken into the following stages:

1. international and/or municipal decision to negotiate an agreement;
2. municipal discussion of the principles which are to guide the negotiators;
3. formulation of the agreement during the (international) negotiations;
4. municipally relevant decision;
5. internationally binding declaration of the municipally relevant decision (However, item no. 5 may sometimes precede no. 4); and,
6. municipal performance of the agreement.

Pursuant thereto, it is necessary to emphasize that the nature of legal counseling in foreign matters adopted by a State, more often than not, impacts somewhat on its treaty-making process. Accordingly, there is a multiplicity of arrangements of legal counseling, chief among which the following are the more commonly found:

- a permanent legal service within the ministry responsible for foreign affairs;
- a centralized legal counseling system, usually within the Ministry of Justice;
- a case-to-case reference to private legal practitioners or academics.

Upon independence, Nigeria had opted for the second approach, based, according to Dr. T. O. Elias, on the need for uniformity and high quality of legal counseling. Thus, all legal work in respect of government activities was to be handled by the Federal Ministry of Justice, a situation which occasioned considerable red-tape and in-fighting between officials of the Ministry, those of Foreign Affairs, National Planning and others, with respect to the treaty-making process in Nigeria.

THE LEGAL FRAMEWORK FOR TREATY-MAKING IN NIGERIA

Admittedly there have been twists and turns in Nigerian treaty-making, very often arising from the personality, power and influence of heads of the various ministries mentioned. However, it is worthy of note that, after a hiatus in treaty relations when it appeared as if the right hand did not know what the left hand was doing in terms of treaty-making, since there was no clear prescription on the matter, more so as it was most difficult to enunciate the legal position regarding treaty-making in Nigeria, the country has finally arrived at a point when it has been able to stipulate the modalities for concluding treaties.

Accordingly, the Treaties (Making Procedure, Etc.) Act of 1993 specifies guidelines for concluding Nigeria!s treaties under, which treaties have now been classified into three categories, viz.,

a) law-making constituting treaties, being agreements rules which govern inter-state relations and co-operation in any area of human endeavour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly;

(b) agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import;

(c) agreements which deal with mutual exchange of cultural and educational facilities.

Accordingly, Nigeria's various constitutions have embodied provisions such as is contained in s. 12 of the 1999 Constitution on treaty implementation thus:

(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

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However, in line with the Treaties (Making Procedure, Etc) Act earlier referred to, not every treaty concluded by Nigeria warrants implementation by way of enabling legislation. Only those which, one way or another, affect existing legislation or the legislative powers of the National Assembly require implementation by way of legislative enactment. Accordingly, treaties which impose financial, political and social costs or which are strictly of scientific or technological import require legislation for their implementation, while mutual exchange or cultural agreements generally do not necessarily have to be implemented via legislation.

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Today, there is a growing tendency among countries to adopt less formal methods of treaty implementation, especially in relation to so-called agreements in simplified form which usually take effect upon signature. While the relevant statute to which reference had just been made really fails to distinguish between treaties and agreements, it is safe to assume that Nigerian state practice would still continue to reserve the term "treaty" for more solemn engagements which, more often than not, are multilateral in form, needing to be laid before the National Assembly for their implementation domestically, as against those that are usually bilateral in nature and envisaging executive rather than legislative action for their implementation.

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The latest in these legal framework is the provision in Section 8 of the personal Income Tax (Amendment) Act of 2011 which provides that;

"Section 8 38 of the principal act is amended-

(i)by substituting for the existing marginal note, the following new Margina Note-

"Avoidance of double taxation agreement" ;

(ii) by substituting for the existing sub-section (I). a new sub-section"(1)"

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"(I) Where the Government of the Federal Republic of 'Nigeria has entered into agreement with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act, any tax of a similar character imposed by the laws of that country, and that it is expedient that the agreement have effect, the Agreement shall have effect "upon ratification by the National Assembly" ; and

(iii) by substituting for the word "arrangement", the word "Agreement" anywhere it occurs in the section.

This has a commencement date of the 14th Day of June,2011.

Nigerian Tax Treaty Model

The key areas of the Nigerian Model are:

i. Preamble and Title: The agreement is on income and capital gains (as opposed to capital) and the purpose includes, not just the avoidance of double taxation but also the prevention of fiscal evasion;

ii Taxes Covered: In Nigeria, the taxes to be covered are -

a) the Personal Income Tax;
b) the Companies Income Tax;
c) the Petroleum Profits Tax; and
d) the Capital Gains Tax.

iii. General Definitions: The areas peculiar to Nigeria are:

a) the definition of 'Nigeria' covers the Federal Republic of Nigeria itself, the territorial waters of Nigeria and the areas which, under international laws are regarded as Nigeria's exclusive economic zone;
b) the competent authority in Nigeria as the Minister of Finance;
c) the definition of the term 'national' covers citizenship in accordance with the provisions of the constitution.

iv. Residence:

a) the definition of the term 'residence' in Article 4(1) includes 'place of incorporation' in accordance with the Provision of Companies and Allied Matters Act (CAMA).

b. paragraph 4(3): the tie breaker for dual residence of companies is the place of incorporation

v. Permanent Establishment (PE):

a) the Nigerian Model has been reviewed several times in view of developments in the economic spheres of the country and the world generally. At a time, the time threshold for a building site, a construction, assembly or installation project to constitute a PE was three months. This has been reviewed upwards to six months;
b) there is a provision for a sales' outlet becoming a PE where auxiliary or preparatory activities are turned into business activities;
c) the condition for an agent to constitute a PE conforms with the provisions of the domestic laws; and
d) the agent may not necessarily be acting for the principal but he may be acting for a company associated with the principal to constitute a PE to the Principal.

vi. The Business Profits: The Nigerian Model includes the following:

a) an inclusion of the 'force of attraction' (discussed below in the first paragraph);
b) the company bears the burden to prove that the business expenses claimed are for the purpose of the business of the company;
c) interest on inter-company loans (other than bank loans) are not deductible.

vii. International Traffic: Income from operation of ships and airlines in international traffic is to be exempted only on reciprocal basis.

viii. Dividends: The model provides for a split rate in paragraph 2

ix. Interests: The Nigerian model provides for:

a) treaty rate of7.5%;

b) interest on loans paid by a government or instrumentality of the government is exempted from tax;

c) interest on loans paid to a conduit company will be denied the treaty benefits;

x. Royalties: The model includes rent in the definition of royalties.

Issues Arising For Consideration in Revising

There are two major issues that serious attention needs to be paid to on the issues arising for consideration in revising the current double tax treaties and in entering into new agreements. These are;

1) International Tax Evasion and Avoidance.

2) Procedural Aspects of Tax Treaty Negotations.

The following United Nations best practices are recommended.

1. International Tax Evasion and Avoidance

The concept of Tax evasion and Tax avoidance

The terms "tax evasion" and "tax avoidance" have not always been used precisely or with a uniform meaning. Strictly speaking, tax evasion is considered to consist of willful and conscious non-compliance with the laws of a taxing jurisdiction. Tax evasion is an action by which a taxpayer tries to escape legal obligations by fraudulent or other illegal means. The illegal conduct might involve simply failing to report income or fabricating deductions, or it may involve highly sophisticated tax planning that is premised on false or intentionally deceptive representations to the tax authorities.

Tax evasion may arise as a result of a failure to properly report income that is legally earned. It may also result from the evasion of tax on income that arises from illegal activities, such as smuggling, drug trafficking, and money-laundering. In a broader sense, tax evasion may encompass a reckless or negligent failure to pay taxes legally due, even if there is no deliberate concealment of income or relevant information.

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Tax avoidance, in contrast, involves the attempt to reduce the amount of taxes otherwise owed by employing legal means. However, the borderline between evasion and avoidance in specific cases may be difficult to define. For one thing, the criminal laws of countries differ, so that behaviour that is criminal under the laws of one country may not be criminal under the laws of another.

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In addition, the definitions of civil and criminal tax fraud may overlap, so that it is within administrative discretion whether or not to pursue a criminal fraud case in a specific instance. In reality, there is a continuum of behaviour, ranging from criminal fraud on one extreme, to civil fraud, to tax avoidance that is not fraudulent but which runs afoul of judicial or statutory anti avoidance rules and therefore does not succeed in minimizing tax according to law, and finally to tax-planning behaviour which is successful in legal tax reduction. The compound expression "tax avoidance and evasion" is therefore often used to encompass a whole range of activity along this spectrum.

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Globalization and the removal of impediments to the free movement of capital and exchange controls have promoted sustainable economic development. However, they have also increased the scope for tax avoidance and evasion with consequential substantial loss of revenue. International tax avoidance and tax evasion cause many problems. Governments lose significant amounts of revenue and hence the honest taxpayers who do not escape their liability to pay tax must bear an additional burden to plug the gap. Countries where the tax compliance is the highest lose out, since the trade flows are diverted elsewhere.

(a) **International cooperation**

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Tax authorities in the Member States of the OECD have responded to concerns about avoidance and evasion by taking on new powers to collect information from taxpayers. Delegates to the Working Party on Tax Avoidance and Evasion systematically inform other countries about the means at their disposal for countering avoidance. These reports cover legislation, court decisions and audit techniques.

It is through this exchange of experiences that the Committee is able to develop and promote the adoption of practices that should enable tax authorities to administer their tax laws in an effective and equitable manner. An example of the results of such discussions is the OECD recommendation on the use and disclosure of Tax Identification Numbers (TINs) to increase compliance on cross-border income flows.

A major objective of bilateral tax treaties, apart from avoidance of double taxation, is to prevent tax avoidance and evasion and to ensure that treaty benefits flow only to the intended recipients. Bilateral tax treaties achieve this objective in several ways. Firstly, they provide for exchange of information between the tax authorities of the Contracting States. Secondly, they contain provisions designed to ensure that treaty benefits are limited to *bona fide residents of the* other treaty country and not to treaty shoppers.

Under the tax treaties, the competent authorities are authorized to exchange information, as may be necessary for the proper administration of the countries' tax laws. The information that is exchanged may be used for a variety of purposes. For example, the information may be used to identify unreported income or to investigate a transfer pricing case. If a country has bank secrecy rules that prevent or seriously inhibit the exchange of information under the tax treaty, it may not be desirable to conclude a bilateral tax treaty with it. In fact, it is necessary to first discuss the issue of information exchange with the other Contracting

State before beginning formal negotiations, because it is one of the very few issues that should be considered as non-negotiable. This may even prevent a country from entering into treaties with some countries with which it may have significant economic ties, but this may be treated as the right policy. Recent technological developments which facilitate international, thus anonymous, communications, and commercial and financial activities can also encourage illegal activities. Over the past several years there has been a marked change, as many of the industrialized nations have recognized the importance of exchange of tax information; the absence thereof serves to encourage not only tax avoidance and evasion but also criminal tax fraud, money-laundering, illegal drug trafficking, and other criminal activity.

(b) Tax planning and treaty shopping

Another aspect of the bilateral tax treaty policy to deal with tax avoidance and evasion is to include in all treaties comprehensive provisions designed to prevent "treaty shopping". This abuse of the treaty can take a number of forms, but it generally involves a resident of a third state C that has either no treaty with the country A or a relatively unfavourable one, establishing an entity in a treaty partner B that has a relatively favourable treaty with the country A. This entity is used to hold title to the person's investments in country A, which could range from portfolio stock investments to major direct investments or other treaty-favoured assets in country A.

By placing the investment in the treaty partner, the resident of country C is able to withdraw returns from the country A investments subject to the favourable rates provided in the tax treaty with country B, rather than the higher rate that would be imposed if the person had invested directly into the country A. Of course, the tax imposed by the treaty partner on the intermediate entity must be relatively low, or the structure will not produce tax savings that justify the added transaction costs.

It is necessary to include anti-abuse rules in bilateral tax treaties in view of several concurrent developments in international tax law. Firstly, although an overwhelming majority of taxpayers who avail themselves of treaty benefits are entitled to those benefits and are not engaged in abusive transactions, aggressive abuse of treaties has increased.

It is relevant to point out that both the commentary to Article 1 of the OECD Model Tax Treaty and the OECD Report on Harmful Tax Competition make clear that countries can impose their domestic anti-abuse rules to claims for treaty benefits. In fact, concerns about the adequacy of current treaty rules to prevent abuses have stimulated work in the OECD on this subject.

(c) Tax avoidance through low-tax jurisdictions

In the most general terms, a low-tax jurisdiction can be defined as a jurisdiction which imposes little or no tax on companies, trusts or other entities organized there. By forming a company in such a jurisdiction and arranging for that company to derive income from third countries, a multinational enterprise may be able to shelter income from taxation both at the source and in its residence country. By forming a holding company or a trust in a tax haven, an individual or institution may similarly be able to shelter investment income from taxation.

The OECD has distinguished between two types of low-tax jurisdictions – those that simply offer a low-tax environment and those it has identified as "non-cooperative jurisdictions". The OECD has sought to combat the threat of non-cooperative jurisdictions to the legitimate tax-policy objectives of its Member States by putting economic pressure on those jurisdictions to cooperate in the prevention of tax fraud and evasion.

Recommendations

a) To strengthen, where necessary, their legal, regulatory or administration provisions and their powers of investigation for the detection and prevention of tax avoidance and evasion, with regard to both their domestic and international aspects, and to exchange experiences with respect to such action;

b) To facilitate, improve and extend exchanges of information between their national tax administrations, with a view to combating tax avoidance and evasion, notably by making more intensive use of international conventions or instruments in force and by seeking new arrangements of a bilateral or multilateral character, with due regard to the provision of adequate safeguards for taxpayers;

c) To exchange experiences on a continuing basis on tax avoidance and evasion practices, on techniques for detecting and preventing them and on ways and means of improving tax compliance in general.

2) Procedural Aspects of Tax Treaty Negotations.

The procedural aspects of negotiating a tax treaty include the identification of the need for a treaty, the establishment of contracts with a potential treaty partner, the appointment of a delegation, the preparations for negotiations, the conduct of the negotiations and procedures for bringing the treaty into force

A. Identification of need for a treaty

In determining whether a need exists for a tax treaty with a particular country, a country should examine the nature and extent of the existing economic relationship between the two countries as well as the potential and desire for growth in that relationship. In particular, there should be an intelligent assessment of the nature of future economic relationship.

For example, a country should consider the likelihood of foreign direct or portfolio investment from the country concerned, the possibility of the country's technical or managerial personnel coming for employment, and the likelihood that residents of the other country will set up branches, offices or subsidiaries within its territorial jurisdiction.

In addition, the country should examine whether the interrelationships between the tax systems of the two countries are inhibiting economic relationships. These inhibiting effects may, for example, be the results of excessively high levels of tax on international income flows, inadequate statutory relief from double taxation, and conflicting definitions of terms or concepts.

Finally, a country should attempt to determine whether, to what extent and for what reasons the tax systems of the two countries result in double taxation on residents of the two countries.

B. Initial contacts

Once a country has identified the need for entering into a treaty with a particular country, it must communicate to that country its desire to open negotiations. As a general rule, such contacts are made initially through diplomatic channels.

When a personal relationship exists between tax officials in the two countries, however, it may be helpful to utilize that relationship. In that event, the official diplomatic contacts should be supplemented by informal contacts through these personal channels.

When necessary, this initial contact phase may be the appropriate time to request information or other materials on the tax system and tax treaties of the other country.

C. Appointment of a delegation

A delegation typically consists of three to five individuals, although this number by no means reflects a hard and fast rule. The leader of the delegation should be a senior official with tax policy responsibility who has the authority to make independent policy decisions, at least on a tentative basis. The members of the delegation should be individuals who, among them, combine most or all of the following skills:

(a) Familiarity with the administrative aspects of tax treaties and with the administration of the international aspects of internal law. An individual having such familiarity would represent, in effect, the competent authority function on the delegation;

(b) A lawyer who is familiar with domestic tax law and able to draft treaty provisions

(c) An economist or other individual with an understanding of the economic relationships between the two countries and an ability to assess the economic impact of the decisions being made in the course of the negotiations.

If negotiations are to be held in a country's home capital, the opportunity may be taken to bring other people into the negotiations for training purposes. If this is to be done, however, care should be exercised to keep the delegations from becoming so big as to "overpower" the visiting delegation.

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Finally, it is most important that one member of the delegation be assigned responsibility for taking careful notes of the discussions.

D. Preparations for negotiations

Members of the delegation should participate, possibly along with others, in preparing for the negotiations. The preparations typically include the following steps:

(a) The tax system of the other country and its existing tax treaties must be studied. The other treaties provide an indication of the range of positions acceptable to the other country;

(b) A draft treaty or working paper should be prepared showing initial positions on the major issues in a tax treaty. This draft may be in general form, to be used for all treaty discussions, or it may be geared to the particular discussions being undertaken. This draft should be transmitted to the other delegation. Though this step is useful for advising the other delegation of positions to be taken in the negotiations, it is also useful for the members of the delegation that prepares it, in requiring them to focus clearly on their own positions;

(c) If the other delegation has prepared a similar draft or working paper, the two drafts should be compared and positions should be prepared on all points of difference;

(d) In working out a country's position, the following groups should be consulted to suggest issues from their own experience: (i) the business community in the country; (ii) that country's citizens who are in the other country (the country's embassy in the other country can carry out this function); and (iii) other government agencies (e.g., investment agencies, government marketing boards, etc.);

(e) If the country does not have any of its nationals available who are familiar with the tax laws of the other country, it may wish to engage an outside expert as a consultant;

(f) It is most useful if at least one member of the delegation is familiar with the United Nations Model Convention, the OECD Model Convention and any relevant regional model treaties.

E. Arrangements for meetings between negotiating delegation

Experience has shown that negotiations typically require at least two rounds of discussions, sometimes more, which are usually held on an alternating basis in the two capitals. It is common experience that one week is an optimal length for a round of discussions. By the end of a week, there is usually an accumulation of issues that require careful consideration with principal officials before final decisions can be made.

Furthermore, as a purely practical matter, officials frequently find that the amount of work that piles accumulates during the discussions can become intolerable when treaty discussions extend more than a week at a time.

In arranging for the meetings, the host delegation should make certain that:

a. there is a common language for negotiations, or

b. That interpreters will be available who can deal with tax concepts and terminology in both languages.

F. Conduct of the negotiations

1. First round of negotiations

It is helpful, as a first order of business, to make certain that each side understands the tax system of the other, particularly as it relates to the taxation of international income flows. If there are particularly complex aspects of a country's tax law that are relevant for a tax treaty, it is often helpful for that country to prepare a brief explanation in written form for the other delegation. Once there is a general understanding of the two tax systems, the negotiations themselves can begin with an article-by-article review of the draft or drafts previously prepared.

If neither side has its own model or draft, the United Nations Model Convention can be used for this purpose. During this initial article-by-article review, agreement can be reached on relatively easy points, and a clarification and, in some cases, a narrowing of the differences can be achieved on the remaining points.

If time remains after concluding one complete review of the draft, a second article-by-article review can be started. At this point, greater effort should be devoted to reaching agreement.

At the conclusion of the week's discussions, it is useful to prepare an agreed statement of the open issues and, if possible, to schedule the next meeting.

2. Between the first and second rounds of the negotiations

It should be agreed at the conclusion of the first round that one side will prepare a draft showing agreed language and, by use of brackets and alternative language or other suitable symbols,

the open issues. This document should be the discussion draft for the second round.

It is important that the notes of the discussions be recorded and distributed to members of the delegations as quickly as possible, while memories are still fresh, particularly if there is more than one treaty under negotiation at the time.

Between the two rounds, the heads of the delegations should correspond in order to exchange drafts, to indicate tentative conclusions on major open issues and to confirm the schedule for the next round of discussions.

3. Second round of negotiations

It is important to maintain both momentum and continuity in treaty negotiations. Thus, the time between rounds should be minimized and, to the extent possible, the composition of the delegations should be retained.

Before resuming the article-by-article or issue-by-issue review of the draft, there should be a brief discussion of changes, if any, in the tax laws of either country between the first and the second rounds.

The review of the common working draft should continue, further narrowing any differences which remained at the beginning of the second round. Although it is generally best not to reverse prior decisions, this possibility should not be ruled out if either side considers it necessary. All decisions at this stage are made subject to policy review.

On occasion, agreements are reached in the course of negotiations that do not readily lend themselves to inclusion in the treaty but that should be made public at some time. There may be, for example, an agreed interpretation of a treaty provision, that is too detailed to go into the treaty text. This interpretation may be spelled out in an exchange of letters to be signed at the same time as the treaty. Such letters of understanding normally would not be subject to ratification, but would form part of the public record.

If full agreement has been reached by the conclusion of the second round, the treaty should be initialed by the heads of delegations. Initialing indicates that the draft reflects the agreement reached at the negotiating level.

If full agreement has not been reached, but nonetheless seems possible, the procedures suggested in the subsections F.2 and F.3 may be repeated. Although it may be possible, at this stage, to conclude an agreement by correspondence, there may be value in scheduling a third, perhaps briefer, meeting so as not to lose momentum. It is sometimes much easier to understand each other's point of view in face-to-face discussions.

G. Preparations for the signature of the treaty

Once agreement has been reached at the delegation level, the draft should be reviewed by senior policy officials. At this stage, to an even greater extent than during the negotiations, frivolous or minor changes should be avoided, but if a strong policy reason for proposing a change in the initialed draft is perceived, this information should be communicated immediately to the other delegation.

Once the draft is fully agreed upon, arrangements should be made for signature at the earliest opportunity under the appropriate procedures in each country. The need to conform texts in two languages can make this stage a time-consuming process. The printing, binding and sealing of agreed texts for signature is normally handled by foreign ministries.

H. Miscellaneous considerations

Countries may find it useful to issue press releases or other public statements that negotiations are about to begin with a particular country. The purpose of such a statement is to solicit comments from interested parties. This procedure may serve two purposes. It may bring to light issues that tax officials had not previously been aware of. Also, those in the private sector appreciate the opportunity to participate in the treaty process.

The negotiations are normally treated as confidential until the treaty is signed. This requirement of confidentiality has at least two positive purposes. It avoids locking negotiators into what may have been intended as tentative negotiating positions. It also avoids subjecting negotiators to pressures from parties who would be affected by these tentative decisions.

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Countries may wish to consider a procedure for reviewing the progress of negotiations, during their course, with interested parties in the private sector. This review can most profitably be done after the general pattern of the new treaty has been established but before final decisions are made. It can serve to apprise the negotiators of some issues that may have surfaced after the beginning of the negotiations, or of problems that could result from provisions already tentatively agreed to. In such meetings, however, caution must be exercised to avoid revealing negotiating positions and other confidential information.

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It is useful for the negotiators to maintain contact with economic officers in their embassy in the capital of the other country and to keep them advised of the progress of the negotiations. Among other things, this facilitates the role of these officers in exchanging messages and other communications between formal negotiation sessions. These officers often will sit in on negotiations held in the country where they are assigned.

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Finally, experience has shown that social contacts between delegations during the negotiations often are most helpful in maintaining a high level of good will between the delegations. The value of such social contacts is in no way correlated with their elaborateness or cost.

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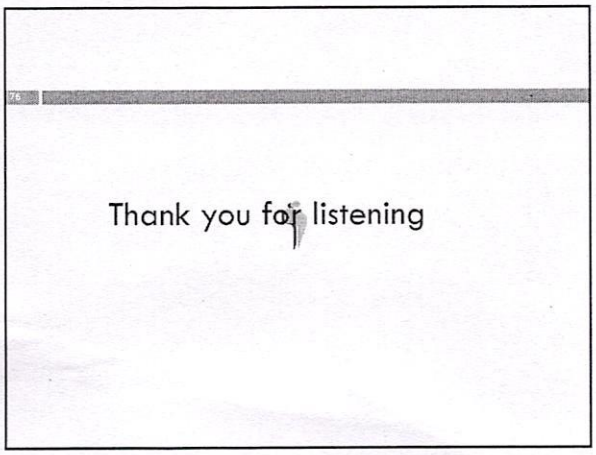
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