



COMMENTARY

UN Committee of Experts on International Cooperation in Tax – 20th Session
Update on the Handbook on Selected Issues for Taxation of the Extractive Industries by
Developing Countries

Chapter XX^{''}: Tax Issues related to the Digitalisation of the Economy – E/C.18/2019/CRP.12
(as referred to in E/C.18/2020/CRP.25)

Question A to the Committee on Paragraphs 17 & 18 and the principles governing the
allocation of taxing rights

1. General Comments

We note that the questions relate to the three proposals which were then merged into the Inclusive Framework Unified Approach and the Subcommittee need to reconsider the question in that context.

Question B

We consider it is accurate to say that taxation at source of passive income is consistent with the supply-side notion of value creation. We agree that for example in the case of royalties the IP relating to that royalty such as a trademark are being exploited in the source jurisdiction and the income from that exploitation therefore arise in the source jurisdiction.

Question C

We have some concerns about indicating that changes to the UN Model Tax Convention should be based on the interaction of supply and demand rather than merely the “supply side” approach as we

would not wish to risk making changes that might be unfavourable to many smaller export-reliant developing countries.

Question D – Complexity of approaches by the Inclusive Framework

As this note is based on the position pre the adopted of the Unified Approach by the Inclusive framework we are unclear as to whether the paper is now asking for our view on the Unified Approach proposals for approaches to determining the routine vs non-routine profits and presumably how the residual profit is calculated to be Amount A for allocation to market jurisdictions. If that is the case then we do not think the current proposals for determining the routine vs non-routine profit is too complex as it is a formulaic approach. As is the calculation of the amount of residual profit allocated to Amount A.

However we do have some concerns over the complexities in the current approach to identify the Amount A paying entities and the jurisdiction where relief for Amount A should be given.