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Tax consequences of the digitalized economy

Proposed Changes to the UN Model including the Commentaries thereon as a consequence of the proposed inclusion of Article 12B on automated digital services

Note by the Secretariat

Summary:

This paper proposes some consequential changes to the 2021 version of the UN Model Tax Convention that would appear to be necessary if the proposal for a new Article 12B on Automated Digital Services as provided for in CRP.1 is accepted by the Committee. ***This paper is for consideration following the consideration of that paper and in the light of the decisions taken, with a view to decisions than being taken on any necessary consequential changes.***

Table of Contents

1. Background

1. At its 22nd Session The Committee will consider paper E/C.18/2021/CRP.1, *Tax consequences of the digitalized economy – issues of relevance for developing countries*. To assist the Committee, the Secretariat has considered possible consequential changes to the text of the UN Model Double Tax Convention (The UN Model) in the event of addition of Article 12B to the UN Model.[1]

2. Section 2 of this note describes suggested consequential changes to the Articles of the UN Model. Section 3 then describes suggested consequential changes to the Commentaries, some of which relate to the addition of Article 12A in 2017 as well. They are based on Article 12B being approved essentially as currently proposed in paper CRP.1 As it is a matter for Committee consideration, this cannot be assumed of course, and the proposals set out in this note would need to be re-assessed to take account of any changes arising from the discussion of CRP.1 at the 22nd Session of the Committee.

2. Consequential Changes to the Text of the UN Model

3. The interactions between Article 12B and Articles 7, 8, 12, 12A and 14 are already proposed to be addressed in 12B or would be addressed by existing language in paragraph 6 of Article 7. The relationship, if any, between Article 12B and Articles 15, 16 and 17 are not addressed in the treaty text. The Co-coordinators of the Drafting Group are of the view that it is highly unlikely that income could be subject to Article 12B and any of Articles 15, 16 or 17 because of the requirement of "minimal human involvement" in the definition of automated digital services in paragraph 5 of proposed Article 12B. Accordingly, this note does not suggest making any changes to the Commentaries on proposed Article 12B or Articles 15, 16 or 17 in response to this issue.

4. Two additions to the text of **Article 23A** along the following lines appear necessary:

> 2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10, 11, 12, ~~and~~ 12A ***and 12B*** may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in that other State.
>
> …
>
> 4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, 12**,** ~~or~~ 12A ***or paragraph 2 of Article 12B*** to such income; in the latter case, the first-mentioned State shall allow the deduction of tax provided for by paragraph 2.

[1] The Secretariat records the helpful contributions by a consultant, Mr. Brian Arnold, on this issue.

5. An addition to the text of **Article 24(4)** along the following lines appears necessary:

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12, ~~or~~ paragraph ~~6~~***7*** of Article 12A ***or paragraph 11 of Article 12B*** apply, interest, royalties, fees for technical services, ***payments underlying income from automated digital services,*** and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

6. Two additions to the text of **Article 29** along the following lines also appear necessary:

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:

…

(e) a person, other than an individual, that

...

(ii) is a recognised pension fund [footnote omitted] to which subdivision (i) of the definition of recognised pension fund in paragraph 1 of Article 3 applies, provided that more than 50 per cent of the beneficial interests in that person are owned by individuals resident of either Contracting State, or more than [__ per cent] of the beneficial interests in that person are owned by individuals resident of either Contracting State or of any other State with respect to which the following conditions are met

(A) individuals who are residents of that other State are entitled to the benefits of a comprehensive convention for the avoidance of double taxation between that other State and the State from which the benefits of this Convention are claimed, and

(B) with respect to income referred to in Articles 10**,** ~~and~~ 11***, 12, 12A and 12B***

of this Convention, if the person were a resident of that other State entitled to all the benefits of that other convention, the person would be entitled, under such convention, to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

…

7. For the purposes of this and the previous paragraphs of this Article:

…

(e) the term "equivalent beneficiary" means:

(i) a resident of any State, provided that:

…

(A)…

(B) (1) with respect to income referred to in Article 10, 11, 12***,*** ~~or~~ 12A ***or 12B*** if the resident had received such income directly, the resident would be entitled under such Convention, a provision of domestic law or any international agreement, to a rate of tax with respect to such income for which benefits are being sought under this Convention that is less than or equal to the rate applicable under this Convention.

3. Consequential Changes to the Commentaries

a. Possible Consequential Changes to the Commentary on Article 1

7. The following additions to the Commentary on Article 1 appear necessary:

28. For instance, some forms of tax avoidance have already been expressly dealt with in the Convention, e.g. by the introduction of the concept of "beneficial owner" (in Articles 10, 11, 12, ~~and~~ 12A***, and 12B***) and of special provisions such as paragraph 2 of Article 17 dealing with so-called artiste-companies. Such problems are also mentioned in the Commentaries on Article 10 (paragraph 13 quoting paragraphs 17 and 22 of the Commentary on Article 10 of the 2014 OECD Model Convention) and Article 11 (paragraph 18 quoting paragraph 12 of the Commentary on Article 11 of the 2014 OECD Model Convention).

…

48. Some forms of treaty abuse can be addressed through specific treaty provisions. A number of such rules are already included in the United Nations Model Convention; these include, in particular, the reference to an agent who maintains a stock of goods for delivery purposes (subparagraph (5) (b) of Article 5), the concept of "beneficial owner" (in Articles 10, 11, 12, ~~and~~ 12A***, and 12B***), the "special relationship" rule applicable to interest, royalties, ~~and~~ fees for technical services ***and income from automated digital services*** (paragraph 6 of Article 11, paragraph 6 of Article 12, ~~and~~ paragraph 7 of Article 12A***, and paragraph 11 of Article 12B***), the rule on alienation of shares of immovable property companies (paragraph 4 of Article 13) and the rule on "star-companies" (paragraph 2 of Article 17). Another example is the modified version of the limited force-of-attraction rule of paragraph 1 of Article 7 that is found in some tax treaties and that applies only to avoidance cases.

…

74. When considering the various approaches for dealing with treaty shopping, countries should take account of their ability to administer those approaches. For many developing countries, it may be difficult to apply very detailed rules that require access to substantial information about foreign entities. These countries might consider that a more limited approach which has the effect of denying the benefits of specific Articles of the Convention where transactions have been entered into for a main purpose of obtaining those benefits, might be more adapted to their own circumstances. The Articles concerned are 10, 11, 12***, 12A, 12B,*** and 21; the provision should be slightly modified as indicated below to deal with the specific type of income covered by each of these Articles:

For Articles 10, 11, 12 and 21:

> The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the [Article 10: "shares or other rights"; Article 11: "debt-claim"; Articles 12 and 21: "rights"] in respect of which the [Article 10: "dividend"; Article 11: "interest"; Article~~s~~ 12 "royalties"***;*** and Article 21: "income"] is paid to take advantage of this Article by means of that creation or assignment.

For Articles 12A and 12B:

> ***The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with performance of services in respect of which the [Article 12A: "fees for technical services are" and Article 12B "income from automated digital services" is] paid to take advantage of this Article by means of such performance of services.***

…

87. To the extent that a country's thin capitalization or earnings stripping rule applies to payments of interest to non-residents but not to similar payments that would be made to residents, it could be in violation of paragraph 4 of Article 24, which provides that "interest, royalties***, fees for technical services, payments underlying income from automated digital services,*** and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first- mentioned State".

…

118. As indicated in paragraph 17.~~2~~***4*** of the Introduction (quoting paragraph 15.2 of the Introduction to the 2017 OECD Model Convention):

> … it is assumed that where a State accepts treaty provisions that restrict its right to tax elements of income, it generally does so on the understanding that these elements of income are taxable in the other State. Where a State levies no or low income taxes, other States should consider whether there are risks of double taxation that would justify, by themselves, a tax treaty. States should also consider whether there are elements of another State's tax system that could increase the risk of non-taxation, which may include tax advantages that are ring-fenced from the domestic economy.

Accordingly, the Committee decided that the following provisions of the Commentary on Article 1 of the OECD Model Convention, which were added as part of the 2017 update of that Convention, are also relevant for purposes of the United Nations Model Convention ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to provide***

additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model):

…

85. Provisions could be included in a tax treaty in order to deny the application of specific treaty provisions with respect to income benefiting from regimes that satisfy the criteria of a general definition of "special tax regimes". For instance, the benefits of the provisions of Articles 11, 12***[, 12A and 12B]*** could be denied with respect to interest, royalties ***[, fees for technical services and income from automated digital services]*** that would be derived from a connected person if such interest and royalties***[,fees for technical services and income from automated digital services, as the case may be]*** benefited, in the State of residence of their beneficial owner, from such a special tax regime; this would be done by adding to Articles 11 12***[, 12A and 12B]*** a provision drafted along the following lines (which could be amended to fit the circumstances of the Contracting States or for inclusion in other Articles of the Convention):

> Notwithstanding the provisions of [(in the case of Article 11): paragraphs 1 and 2 but subject to the provisions of paragraph 4] [(in the case of Article 12): paragraph***[***s***]*** 1 ***[and 2]*** but subject to the provisions ***of*** paragraph ~~3~~***[4]***] ***[(in the case of Article 12A): paragraphs 1 and 2 but subject to the provisions of paragraph 4][in the case of Article 12B: paragraphs 1, 2 and 3 but subject to paragraph 8]*** of this Article, [interest] [royalties] ***[fees for technical services][income from automated digital services]*** arising in a Contracting State and beneficially owned by a resident of the other Contracting State that is connected to the payer may be taxed in the first-mentioned Contracting State in accordance with domestic law if such resident benefits from a special tax regime with respect to the [interest] [royalties] ***[fees for technical services][income from automated digital services]*** in the State of which it is resident.

86. Also, the above provision would require a definition of "special tax regime", which could be drafted as follows and added to the list of general definitions included in paragraph 1 of Article 3:

> the term "special tax regime" means any statute, regulation or administrative practice in a Contracting State with respect to a tax described in Article 2 (Taxes Covered) that meets all of the following conditions:
>
> (i) results in one or more of the following:
>
> A) a preferential rate of taxation for interest, royalties***[, fees for technical services, income from automated digital services]*** or any combination thereof as compared to income from sales of

goods or services ***[other than technical services or automated digital services]***;

B) a permanent reduction in the tax base with respect to interest, royalties***[, fees for technical services, income from automated digital services]*** or any combination thereof without a comparable reduction for income from sales of goods or services ***[other than technical services or automated digital services,]*** by allowing:

…

(ii) in the case of any preferential rate of taxation or permanent reduction in the tax base for royalties ***[fees for technical services or income from automated digital services,]*** does not condition such benefits on

A) the extent of research and development activities that take place in the Contracting State; or
B) expenditures (excluding any expenditures which relate to subcontracting to a related party or any acquisition costs), which the person enjoying the benefits incurs for the purpose of actual research and development activities;

…

88. Under the first condition, described in subdivision (i) of the definition, the regime must result in one or more of the following:

A. a preferential rate of taxation for interest, royalties***[, fees for technical services, income from automated digital services]***or any combination thereof as compared to income from sales of goods or services ***[other than technical services or automated digital services]***;B. certain permanent reductions in the tax base with respect to interest, royalties***[, fees for technical services, income from automated digital services]*** or any combination thereof without a comparable reduction for sales or services income ***[other than fees for technical services or income from automated digital services]***; or

C. a preferential rate of taxation or certain permanent reductions in the tax base with respect to substantially all income or substantially all foreign source income for companies that do not engage in the active conduct of a business in that Contracting State. This part of the definition is intended to identify regimes that, in general, tax mobile income more favourably than non-mobile income.

89. As provided in clause A), subdivision (i) shall be met if a regime provides a preferential rate of taxation for interest, royalties***[, fees for technical services, income from automated digital services]*** or a

combination ***[thereof]*** as compared to sales or services income ***[other than technical services or automated digital services]***. For example, a regime that provides a preferential rate of taxation on royalty income***[, fees for technical services or income from automated digital services]*** earned by resident companies, but does not provide such preferential rate to income from sales or services, would meet this condition. Furthermore, a regime that provides a preferential rate of taxation for all classes of income, but such preferential rate is in effect available primarily for interest, royalties***[, fees for technical services or income from automated digital services]*** or a combination ***[thereof]***, would satisfy subdivision (i) despite the fact that the beneficial treatment is not explicitly limited to those classes of income. For example, a tax authority's administrative practice of issuing routine rulings that provide a preferential rate of taxation for companies that represent that they earn primarily interest income (such as group financing companies) would satisfy subdivision (i) even if such rulings as a technical matter provide that preferential rate to all forms of income.

90. Similarly, as provided in clause B), subdivision (i) shall be met if a regime provides for a permanent reduction in the tax base with respect to interest, royalties***[, fees for technical services, income from automated digital services]*** or a combination thereof as compared to sales or services income, in one or more of the following ways: an exclusion from gross receipts (such as an automatic fixed reduction in the amount of royalties included in income, whereas such reduction is not also available for income from the sale of goods or services); a deduction without any corresponding payment or obligation to make a payment; a deduction for dividends paid or accrued; or taxation that is inconsistent with the principles of Articles 7 or 9 of the Convention. An example of a tax regime that results in taxation that is inconsistent with the principles of Article 9 is that of a regime under which no interest income would be imputed on an interest-free note that is held by a company resident of a Contracting State and is issued by an associated enterprise that is a resident of the other Contracting State.

…

94. The second condition, described in subdivision (ii) of the definition, applies only with respect to royalties***[, fees for technical services, income from automated digital services, or a combination thereof]*** and is met if a regime does not condition benefits either on the extent of research and development activities that take place in the Contracting State or on expenditures (excluding any expenditures which relate to subcontracting to a related party or any acquisition costs), which the person enjoying the benefits incurs for the purpose of actual research and development activities. Subdivision (ii) is intended to ensure that royalties ***[and similar payments]*** benefiting from patent box or innovation box regimes are eligible for treaty benefits only if such regimes satisfy one of these two requirements. Some States, however, would prefer that the requirements of subdivision (ii) be restricted so as to only be met if a regime conditions benefits on the extent of research and development activities that take

place in the Contracting State. States that share that view may prefer to use the following alternative version of subdivision (ii):

> (ii) in the case of any preferential rate of taxation or permanent reduction in the tax base for royalties***[, fees for technical services, income from automated digital services, or a combination thereof]*** does not condition such benefits on the extent of research and development activities that take place in the Contracting State;

…

101. Whilst the above suggested provision on special tax regimes would address the issue of targeted tax regimes, it would not deal with changes of a more general nature which could be introduced into the domestic law of a treaty partner after the conclusion of a tax treaty and which might have prevented the conclusion of the treaty if they had existed at that time. For instance, some Contracting States might be concerned if the overall tax rate that another State levies on corporate income falls below what they consider to be acceptable for the purposes of the conclusion of a tax treaty. Some States might also be concerned if a State that taxed most types of foreign income at the time of the conclusion of a tax treaty decided subsequently to exempt such income from tax when it is derived by a resident company. The following is an example of a provision that would address these concerns, it being understood that the features of that provision would need to be restricted or extended in order to deal adequately with the specific areas of concern of each State:

> 1. If at any time after the signing of this Convention, a Contracting State
>
> a) reduces the general statutory rate of company tax that applies with respect to substantially all of the income of resident companies with the result that such rate falls below the lesser of either
>
> (i) [rate to be determined bilaterally] or
>
> (ii) 60 per cent of the general statutory rate of company tax applicable In the other Contracting State, or
>
> b) the first-mentioned Contracting State provides an exemption from taxation to resident companies for substantially all foreign source income (including interest and royalties), the Contracting States shall consult with a view to amending this Convention to restore an appropriate allocation of taxing rights between the Contracting States. If such consultations do not progress, the other Contracting State may notify the first-mentioned Contracting State through diplomatic channels that it shall cease to apply the provisions of Articles 10, 11, 12, [12A***, 12B***] and 21. In such case, the provisions of such Articles shall cease to have effect in both Contracting States with respect to payments to resident companies six months after the date that the other Contracting State issues a written public notification stating that it shall cease to apply the provisions of these Articles.
>
> …

102. This suggested provision provides that if, at any time after the signing of the Convention, either Contracting State enacts certain changes to domestic law, the provisions of Articles 10, 11, 12, [12A***, 12B***] and 21 may cease to have effect with respect to payments to companies if, after consultation, the Contracting States fail to agree on amendments to the Convention to restore an appropriate allocation of taxing rights between the Contracting States.

…

106. When either type of subsequent domestic law change occurs, the Contracting States shall first consult with a view to concluding amendments to the Convention to restore an appropriate allocation of taxing rights between the two Contracting States. In the event that such amendments are agreed, or that the Contracting States agree, after such consultation, that the allocation of taxing rights in the Convention is not disrupted by the relevant change made to the domestic law of one of the States, paragraph 1 has no further application. If, however, after a reasonable period of time, such consultations do not progress, the other State may notify the State whose domestic law has changed, through diplomatic channels, that it shall cease to apply the provisions of Articles 10, 11, 12, ***[***12A***, 12B]*** and 21. Once such diplomatic notification has been made, in order for paragraph 1 to apply, the source State must announce by public notice that it shall cease to apply the provisions of these Articles. Six months after the date of such written public notification, the provisions of these Articles shall cease to have effect in both Contracting States with respect to payments to companies that are residents of either State.

b. Possible Consequential Changes to the Commentary on Article 7

8. The following additions to the Commentary on Article 7 appear necessary:

21. This paragraph reproduces Article 7, paragraph 7, of the 2008 OECD Model Convention. The Committee considers that the following part of the Commentary on paragraph 7 of Article 7 of the 2008 OECD Model Convention is applicable to the corresponding paragraph of Article 7 of the United Nations Model Convention ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model)***:

…

61. To the extent that an application of this Article and the special Article concerned would result in the same tax treatment, there is little practical significance to this question. Further, it should be noted that some of the special Articles contain specific provisions giving priority to a specific Article (cf. paragraph 4 of Article 6, paragraph 4 of Articles 10 and 11, paragraph [4] of Article 12***[, paragraph 4 of Article 12A, paragraph 8 of Article 12B]*** and paragraph 2 of Article 21).

62. It has seemed desirable, however, to lay down a rule of interpretation in order to clarify the field of application of this Article in relation to the other Articles dealing with a specific category of income. In conformity with the practice generally adhered to in existing bilateral conventions, paragraph 7 gives first preference to the special Articles on dividends, interest etc. It follows from the rule that this Article will be applicable to business profits which do not belong to categories of income covered by the special Articles, and, in addition, to dividends, interest etc. which under paragraph 4 of Articles 10 and 11, paragraph [4] of Article 12***[, paragraph 4 of Article 12A, paragraph 8 of Article 12B]*** and paragraph 2 of Article 21, fall within this Article […]. It is understood that the items of income covered by the special Articles may, subject to the provisions of the Convention, be taxed either separately, or as business profits, in conformity with the tax laws of the Contracting States.

c. Possible Consequential Changes to the Commentary on Article 8

9. The following additions to paragraph 9 of the Commentary on Article 8 may be appropriate to explain that the operation of Articles 12A and 12B are subject to Article 8:

> 9. This paragraph, which reproduces Article 8, paragraph 1, of the 2017 OECD Model Convention, has the objective of ensuring that profits from the operation of ships or aircraft in international traffic will be taxed in one State alone. The paragraph's effect is that these profits are wholly exempt from tax at source and are taxed exclusively in the Contracting State of the enterprise engaged in international traffic. It provides an independent operative rule for these activities and is not qualified by Articles 5 and 7 relating to business profits governed by the permanent establishment rule. ***Articles 12A and 12B, which allow source taxation of fees for technical services and income from automated digital services, respectively, are also subject to the operation of Article 8 (see paragraph 2 of Article 12A and paragraph 49 of Commentary on Article 12A, paragraphs 2 & 3 of Article 12B and paragraph 38 of the Commentary on Article 12B).*** The exemption from tax in the source country is predicated largely on the premise that the income of these shipping enterprises is earned on the high seas, that exposure to the tax laws of numerous countries is likely to result in double taxation or at best in difficult allocation problems, and that exemption in places other than the home country ensures that the enterprises will not be taxed in foreign countries if their overall operations turn out to be unprofitable. Considerations relating to international air traffic are similar. Since a number of countries with water boundaries do not have resident shipping companies but do have ports used to a significant extent by ships from other countries, they have traditionally disagreed with the principle of such an exemption of shipping profits and would argue in favour of alternative B.

d. Possible Consequential Changes to the Commentary on Article 12A

10. Paragraph 26 of the Commentary on Article 12A provides an alternative under which a source State could tax all fees for services (not only fees for technical services) in certain circumstances. There are therefore substantial overlaps between the alternative and Article 12B. The following changes to the alternative provision and the paragraph describing it could be considered:

> 26. Instead, countries concerned about the scope of Article 12A and the uncertainty associated with the definition of "fees for technical services" in Article 12A, paragraph 3 might consider an alternative version of Article 12A under which Article 12A would potentially apply to all fees for services (technical and other services) provided in a Contracting State, and also to fees for services provided outside that State by closely related persons, other than payments expressly excluded under paragraphs 3(a), (b), and (c). Under this alternative provision, paragraphs 1, 2, 4, and 7 of Article 12A would remain unchanged except that the term "fees for technical services" in those paragraphs would be replaced by the term "fees for services." However, paragraphs 3, 5 and 6 would be replaced by the following paragraphs:
>
> > 3. The term "fees for services" as used in this Article means any payment in consideration for any service, unless the payment is made:
> >
> > *(a)* to an employee of the person making the payment;
> > *(b)* for teaching in an educational institution or for teaching by an educational institution; or
> > *(c)* by an individual for services for the personal use of an individual.

5. For the purposes of this Article, fees for services shall be deemed to arise in a Contracting State if:

(a) the services are performed in that State; or
(b) the payer is a resident of that State and the fees are paid to a closely related enterprise or person unless the payer carries on business in the other Contracting State ~~or a third State~~ through a permanent establishment situated in that State, or performs independent personal services through a fixed base situated in the other Contracting State ~~or a third State~~ and such fees are borne by that permanent establishment or fixed base; or
(c) the payer has in that State a permanent establishment or a fixed base in connection with which the obligation to pay the fees for services was incurred, and such fees are borne by such permanent establishment or fixed base, and are paid to a closely related enterprise or person.

6. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise. For the purposes of this Article, an individual shall be a closely related person with respect to another individual if the individual is related to that other individual by blood relationship, marriage or adoption.

27. Under this alternative, a country would be entitled to impose tax under Article 12A, paragraph 2 up to the maximum agreed rate on fees for services paid by a resident of that country or by a non-resident with a permanent establishment or fixed base in that country to a resident of the other Contracting State if the fees for services arise in the first country. Fees for services would be deemed to arise in a country in accordance with paragraph 5 if:

1. the services are provided in that country or

2. the services are provided outside that country by a person who is closely related

to the payer of the fees.

Thus, this alternative provision would eliminate any disputes about whether the relevant services are within the definition of "fees for technical services" in Article 12A, paragraph 3 because it applies to all fees for services except those payments excluded by paragraphs 3 (a) to (c). Under this alternative provision, a Contracting State would not be entitled to tax fees for services paid to service providers resident in the other Contracting State that are not closely related to the payer for services performed outside the first State. In contrast, under Article 12A, fees for technical services paid to non-closely related service providers resident in the other Contracting State for services provided outside the first State would be taxable by the first State. However, under the alternative provision, a Contracting State would be entitled to tax fees for services provided outside that State if the services are provided by persons closely related to the payer. In many cases, such closely-related party services present the most serious risk of eroding a country's tax base. ***In 2021, the Committee of Experts agreed to the inclusion of Article 12B in the UN Model to address the taxation of income from automated digital services. Countries that seek to include both the alternative provision and Article 12B in their treaties should consider whether any modifications to the provisions are necessary in order to avoid overlaps in coverage.***

11. These additional changes to the Commentary on Article 12A may be necessary or helpful (in some cases to conform the Commentary on Article 12A to the final text of the provision):

37. Since paragraph 2 of Article 12A is subject to the provisions of Articles 8 (International Shipping and Air Transport), 16 (Directors' Fees and Remuneration of Top-Level Managerial Officials) and 17 (Artistes and Sportspersons), Article 12A does not apply to fees for technical services to which the provisions of those Articles apply. In general, the taxing rights of a country under Article 8, ***16 or*** 17 ~~or 18~~ are unlimited, whereas the taxing rights under Article 12A, paragraph 2 are limited to the maximum percentage of the gross fees for technical services agreed to in that provision. The relationship between Article 12A, paragraph 2 and Articles 8, ***16 and*** 17 ~~and 18~~ is discussed further in the Commentary on paragraph 2.

37.1 Paragraph 7 of Article 12B provides that the provisions of Article 12B shall not apply if the payments underlying the income from automated digital services qualify as "fees for technical services" under Article 12A. Accordingly, Article 12B will not apply to any amount within the scope of Article 12A.

41. Article 12A deals only with fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State. It does not, therefore, apply to fees for technical services arising in a third State. Paragraph 5 and paragraph 6 specify when fees for technical services are deemed to arise in a Contracting State and deemed not to arise in a Contracting State, respectively. However, ~~unlike Articles 10 and 11, which do not apply to dividends paid by a company resident in a third State or interest arising in a third State,~~ Article 12A applies to fees for technical services paid by a resident of a Contracting State ~~or a third State~~ that are borne by a permanent establishment or fixed base that the resident has in the other Contracting State.

43. When considered in conjunction with Article 23 (Methods for the Elimination of Double Taxation), paragraph 2 establishes the primary right of the country in which fees for technical services arise to tax those payments in accordance with its domestic law (subject to the limitation on the maximum rate of tax if the beneficial owner of the fees is a resident of the other Contracting State). Accordingly, the country in which the recipient of the fees is resident is obligated to prevent double taxation of those fees. Under Article 23 A or 23 B, the residence country is required to provide relief from double taxation through the exemption from tax of the fees for technical services or the granting of a credit against tax payable to the residence country on the fees for technical services for any tax imposed on those fees by the other Contracting State in accordance with Article 12A. In this regard, where a country applies the exemption method under Article 23 A, it is entitled to apply the credit method under Article 23 A, paragraph (2) with respect to items of income taxable under Article 10, 11, 12***,*** ~~or~~ 12A ***or 12B***.

49. The application of paragraph 2 is expressly subject to the provisions of Article 8. Certain payments for international shipping, air transportation or inland waterways transport under Article 8 could be within the definition of "fees for technical services" in paragraph 3. This might be the case with respect to auxiliary activities that are closely connected to the direct operation of ships and aircraft, as discussed in paragraph 11 of the Commentary on Article 8. To eliminate any uncertainty in this regard, paragraph 2 explicitly provides that in any situation in which both Article 12A and Article 8 apply to the same services, the provisions of Article 8 prevail. Thus, any fees for technical services that result from the operation of ships or aircraft in international traffic~~, or the operation of boats in inland waterways,~~ in accordance with the terms of Article 8 are taxable exclusively in accordance with that Article.

73. The definition of "fees for technical services" in paragraph 3 does not exclude profits from international shipping~~, inland waterways transport~~ and international air transport, income from entertainment and sports activities, and pensions and social security payments. However, such income (even if it is within the definition of "fees for technical services") is not subject to tax by a country under paragraph 2 if it is taxable under Article 8 (International Shipping and Air Transport), 17 (Artistes and Sportspersons), or 18 (Pensions and Social Security Payments) as the case might be, because paragraph 2 is expressly subject to the provisions of Article 8, 17 and 18.

104. This paragraph provides that paragraphs 1 and 2 do not apply to fees for technical services if the person who provides the services has a permanent establishment or fixed base in the State in which the fees arise and the fees are effectively connected with that permanent establishment or fixed base. In this regard, paragraph 4 is similar to Article 10, paragraph 4, Article 11, paragraph 4**,** ~~and~~ Article 12, paragraph 4 ***and Article 12B, paragraph 8***. Thus, if a resident of one Contracting State provides technical services through a permanent establishment or fixed base located in the other Contracting State, the fees received for those services will be taxable by the State in which the permanent establishment or fixed base is located in accordance with Article 7 or Article 14, rather than in accordance with Article 12A.

111. Paragraph 5 is subject to paragraph 6, which provides an exception to the source rule in paragraph 5. Paragraph 6 deems fees for technical services made by a resident of a Contracting State not to arise in that State where that resident (the payer) carries on business through a permanent establishment in the other Contracting State or performs independent personal services through a fixed base in the other Contracting State ~~or in a third State~~ and the fees for technical services are borne by that permanent establishment or fixed base. As a result, in these circumstances, the Contracting State in which the payer is resident is not allowed to tax the payments for technical services under paragraph 2.

e. Possible Consequential Changes to the Commentary on Article 14

12. As it seems advisable to explain the relationship between Article 14 and Article 12B, it is also suggested to add a similar paragraph with respect to Article 12A. The two paragraphs could be drafted along the following lines:

12. Under paragraph 4 of Article 12A, if a resident of one Contracting State performs independent personal services (that are technical services within the meaning of

Article 12A) in the other Contracting State through a fixed base that is regularly available to the resident and receives fees for those services, paragraph 3, Article 14 will apply to those ~~payments~~ fees in priority to Article 12A. However, if a resident of one Contracting State provides independent personal services (that are technical services) that arise in the other Contracting State, but those services are not provided through a fixed base in that other State, the fees for those services are taxable by that other State under Article 12A paragraph (2).

13. Under paragraph 8 of Article 12B, if a resident of one Contracting State performs independent personal services (that are automated digital services within the meaning of paragraph 5 of Article 12B) in the other Contracting State through a fixed base that is regularly available to the resident and receives payments in consideration for those services, Article 14 will apply to those payments in priority to Article 12B. However, if a resident of one Contracting State provides independent personal services (that are automated digital services) that arise in the other Contracting State, but those services are not provided through a fixed base in that other State, the income derived from those services is taxable by that other State under Article 12B

f. Possible Consequential Changes to the Commentary on Article 23

13. These additions to the Commentary on Article 23 appear necessary:

14. The following extracts from the 2017 OECD Commentary on Article 23 A and 23 B of the OECD Model Convention are applicable to Articles 23 A and 23 B (the additional comments that appear between square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to reflect the differences between the provisions of the OECD Model Convention and those of this Model and also to specify the applicable paragraph/subparagraph of this Model):

…

> 9. Where a resident of the Contracting State R derives income from the same State R through a permanent establishment [or a fixed base] which he has in the other Contracting State E, State E may tax such income (except income from immovable property situated in State R) if it is attributable to the said permanent establishment [or fixed base] (paragraph 1 of Article 7 and paragraph 2 of Article 21). In this instance too, State R must give relief under Article 23 A or Article 23 B for income attributable to the permanent establishment [or fixed base] situated in State E, notwithstanding the fact that the income in question originally arises in State R […]. However, where the Contracting States agree to give to State R a limited right to tax as the State of source of dividends or interest ***[or fees for technical services or income from automated digital services]*** within the limits fixed in paragraph 2 of the Articles 10 or 11 or 12 [or 12A ***or 12B***] then the two States should also agree upon a credit to be given by State E for the tax levied by State R, along the lines of paragraph 2 of Article 23 A or of paragraph 1 of Article 23 B.

> 31. Contracting States may use a combination of the two methods. Such combination is indeed necessary for a Contracting State R which generally adopts the exemption method in the case of income which under Articles 10

> and 11 [, as well as 12***,*** ~~and~~ 12A ***and 12B***] may be subjected to a limited tax in the other Contracting State S. For such case, Article 23 A provides in paragraph 2 a credit for the limited tax levied in the other Contracting State S […]. Moreover, States which in general adopt the exemption method may wish to exclude specific items of income from exemption and to apply to such items the credit method. In such case, paragraph 2 of Article 23 A could be amended to include these items of income.

16. The OECD Commentary continues as follows ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model)***:

…47. In Articles 10 and 11 [and 12***,*** ~~and~~ 12A ***and 12B***] the right to tax dividends and interest***[, royalties, fees for technical services and income from automated digital services]*** is divided between the State of residence and the State of source. In these cases, the State of residence is left free not to tax if it wants to do so […] and to apply the exemption method also to the above-mentioned items of income. However, where the State of residence prefers to make use of its right to tax such items of income, it cannot apply the exemption method to eliminate the double taxation since it would thus give up fully its right to tax the income concerned. For the State of residence, the application of the credit method would normally seem to give a satisfactory solution. Moreover, as already indicated in paragraph 31 above, States which in general apply the exemption method may wish to apply to specific items of income the credit method rather than exemption. Consequently, the paragraph is drafted in accordance with the ordinary credit method. The Commentary on Article 23 B hereafter applies *mutatis mutandis* to paragraph 2 of Article 23 A.

16.1 The Committee considers that the following Commentary on paragraph 4 of Article 23 A of the OECD Model Convention is applicable to paragraph 4 (the additional comments that appear in italics between square brackets, which are not part of the Commentary on the OECD Model, have been inserted in order to reflect the fact that paragraph 4 also applies where the State of source applies the provisions of paragraph 2 of Article 12***, paragraph 2 of Article 12A or paragraph 2 of Article 12B,*** to an item of income):

…

> 56.2 The paragraph only applies to the extent that the State of source has applied the provisions of the Convention to exempt an item of income or capital or has applied the provisions of paragraph 2 of Article 10, *[…]* 11 *[, 12****,*** ~~*or*~~ *12A* ***or 12B****]* to an item of income. The paragraph would therefore not apply where the State of source considers that it may tax an item of income or capital in accordance with the provisions of the Convention but where no tax is actually payable on such income or capital under the provisions of the domestic laws of the State of source. In such a case, the State of residence must exempt that item of income under the provisions of paragraph 1 because the exemption in the State of source does not result from the application of the provisions of the Convention but, rather, from the domestic law of the State of source (see

> paragraph 34 above). Similarly, where the source and residence States disagree not only with respect to the qualification of the income but also with respect to the amount of such income, paragraph 4 applies only to that part of the income that the State of source exempts from tax through the application of the Convention or to which that State applies paragraph 2 of Article 10, *[…]* 11 *[,12****,*** ~~*or*~~ *12A* ***or 12B****]*.

16.3 Paragraph 4 is only applicable to the extent that the State of source "applies the provisions of this Convention" to either exempt an item of income or to restrict its right to tax under paragraphs 2 of Articles 10, 11**,** ~~or~~ 12***, 12A or 12B***. Clearly, therefore, paragraph 4 will not apply to cases where the Convention gives an unlimited right to tax to the State of source but that State, pursuant to its domestic law, does not exercise this right. For example, both Contracting States consider that services are performed, for the same or a connected project, during more than 183 days in the State of source and the income attributable to those services is taxable in the State of source in accordance with Articles 5 and 7. Under the domestic law of the State of source, however, non-residents are only taxable on profits attributable to a permanent establishment situated in the State and no tax is therefore payable on the income. In such a case, the State of source cannot be said to have applied the provisions of the Convention to exempt the income since these provisions clearly provide that the income may be taxed by that State. Paragraph 4 therefore does not apply and the State of residence must exempt the income according to paragraph 1.

16.4 Paragraph 4 also applies where the State of source interprets the facts of a case or the provisions of the Convention in such a way that an item of income falls under the provisions of paragraph 2 of Article 10, 11***,*** ~~or~~ 12***, 12A or 12B*** that provides for limited taxation in the State of source while the State of residence adopts a different interpretation and considers that the item falls under a provision of the Convention that allows the State of source to tax the item without any limitation. For example, on the one hand, the State of source considers that royalties paid by one of its residents and beneficially owned by a resident of the other Contracting State are taxable at the limited rate provided for in paragraph 2 of Article 12. On the other hand, the State of residence of the beneficial owner considers that the right in respect of which the royalties are paid is effectively connected with a permanent establishment situated in the State of source through which the beneficial owner carries on business. The State of residence considers therefore that the royalties are taxable in the State of source without any limitation in accordance with paragraph 4 of Article 12 and are exempted under the provisions of paragraph 1. In such case, to the extent that the difference of views is not solved through the mutual agreement procedure, paragraph 4 allows the State of residence not to apply paragraph 1.

16.5 Where the State of source applies the provisions of paragraph 2 of Article 10, 11**,** ~~or~~ 12***, 12A or 12B***, the State of residence, in order to eliminate double taxation, should grant a credit pursuant to paragraph 2 of Articles 23 A. This should be the case even if the State of residence has interpreted the facts of the case or the provisions of the Convention in such a way that would result in the State of source having an unlimited right to tax the income under the convention, which would mean that the State of residence should normally exempt that income under the provisions of paragraph 1. Applying the credit method in that case is more efficient than trying to determine, pursuant to the mutual agreement procedure how the treaty requires that double taxation be relieved. The last part of paragraph 4, which is not found in the OECD Model, has been added for the sake of clarity in order to make that point explicit. In paragraph 2, some States may require a credit for taxes payable in the other Contracting State to be granted subject to the provisions of their domestic law regarding the allocation of a credit for foreign taxes but without affecting the general principle provided in such paragraph. Such wording would generally allow the application of the credit resulting from paragraph 4. However, where the reference to domestic law is not so limited, the Contracting States should verify during the negotiations that no inconsistency between the domestic law and the treaty rules exist that could prevent the granting of the credit (e.g. the domestic law of the State of residence may not provide for a credit for foreign taxes where an item of income is taxed under its domestic law as a business profit attributable to a permanent establishment and not as a royalty).

16.6 Where the State of source applies the provisions of paragraph 2 of Article 10, 11**,** ~~or~~ 12***, 12A or 12B*** to income, some States may prefer not to deny the application of the provisions of paragraph 1 despite the fact that the State of source must limit its tax on such income. Those States may limit the scope of paragraph 4 to cases where the State of source applies the provisions of the Convention to exempt an income or capital from tax and delete the part dealing with Articles 10, 11**,** ~~and~~ 12***, 12A and 12B***.

g. Possible Consequential Changes to the Commentary on Article 24

14. These additions to the Commentary on Article 24 appear necessary:

2. The Committee considers that the following extracts from the Commentary on paragraphs 1 to 4 of Article 24 of the OECD Model Convention are applicable to corresponding paragraphs of Article 24 (the additional comments that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to reflect the differences between the provisions of the OECD Model Convention and those of this Model and also to specify the applicable paragraph/subparagraph of this Model):

…

> 73. This paragraph is designed to end a particular form of discrimination resulting from the fact that in certain countries the deduction of interest, royalties***, fees for technical services, payments underlying income from automated digital services*** and other disbursements allowed without restriction when the recipient is resident, is restricted or even prohibited when he is a non-resident. The same situation may also be found in the sphere of capital taxation, as regards debts contracted to a non-resident. It is however open to Contracting States to modify this provision in bilateral conventions to avoid its use for tax avoidance purposes.

h. Possible Consequential Changes to the Commentary on Article 29

15. These additions to the Commentary on Article 29 appear necessary:

7. Paragraphs 8 through 10 of the Commentary describing the detailed version of Article 29 of the OECD Model provide ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been***

inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model):

> 10. Since the definition of "equivalent beneficiary" that would be used for the purpose of paragraph 4 of the detailed version dealing with derivative benefits would exclude persons who, under another convention, are entitled to relief from taxation by the State of source that is not as favourable as the relief provided under the Convention, that definition would have the so-called "cliff" effect of denying all treaty benefits even if the difference in the relief provided by the two conventions is relatively minor. In that case, some States consider that it is appropriate to provide relief from taxation by the State of source that is similar to the relief that would be provided under the other convention. This treatment may be achieved through the alternative provisions included in paragraph 147 below that relate to the taxation of dividends, interest and royalties ***[fees for technical services and income from automated digital services]***, which are provisions that alleviate the so-called "cliff effect" when a potential equivalent beneficiary is, under another convention, entitled to restrictions on taxation by the State of source that are not as favourable as those provided by the Convention. Instead of denying all treaty benefits with respect to such income, these provisions grant limited benefits that broadly correspond to those that would have been available under the other convention. In order to ensure that paragraph 1 does not deny the benefits granted under these alternative provisions, which would be contrary to the purpose of these provisions, these States should adopt a different version of paragraph 1 that would be drafted as follows:
>
> > Except as otherwise provided in this Article and in reference to the paragraphs of Articles 10, 11,12 ***[12A, and 12B]*** that relate to the so-called "cliff effect", a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 25), unless such resident is a "qualified person", as defined in paragraph 2, at the time that the benefit would be accorded.

29. Paragraphs 144 through 147 of the Commentary to the detailed version of Article 29 of the OECD Model provide ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model)***:

> 147. As explained in paragraph 10 above, where paragraph 4 on derivative benefits applies, the definition of equivalent beneficiary will exclude persons who, under another convention, are entitled to relief from taxation by the State of source that is not as favourable as the relief provided under the Convention. Some States may want to address the resulting so-called "cliff" effect of denying all treaty benefits even if the difference in the relief provided by the two conventions is relatively minor by providing relief from taxation by the State of source that is similar to the relief that would have been provided under the other convention. This treatment could be achieved through the alternative provisions below that relate to the taxation of dividends, interest and royalties ***[,fees for technical services and income from automated digital services]*** and that grant limited benefits that broadly correspond to those that would have been available under the other convention:

…

Provision on royalties to be added to Article 12

Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph ~~3~~*4* of this Article, in the case of a company seeking to satisfy the requirements of paragraph 4 of Article 29 regarding royalties, if such company fails to satisfy the criteria of that paragraph solely by reason of the requirement in clause B) of subdivision (i) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29, such company may be taxed in the Contracting State of which the royalty arises and according to the laws of that State, except that the tax so charged shall not exceed the highest rate among the rates of tax to which persons described in the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29 (notwithstanding the requirement of clause B) of subdivision (i) of that definition) would have been entitled if such persons had received the royalty directly. For purposes of this paragraph, a person described in subdivision (iii) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29 shall be treated as entitled to the limitation of tax to which such person would be entitled if such person were a resident of the same Contracting State as the company receiving the royalties.

Provision on fees for technical services to be added to Article 12A

Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 4 of this Article, in the case of a company seeking to satisfy the requirements of paragraph 4 of Article 29 of this Convention regarding fees for technical services, if such company fails to satisfy the criteria of that paragraph solely by reason of:

a) the requirement in clause B) of subdivision (i) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29; or

b) the requirement, in subdivision (ii) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29, that a person entitled to benefits under paragraph 5 of Article 29 would be entitled to a rate of tax with respect to fees for technical services that is less than or equal to the rate applicable under paragraph 2 of this Article;

such company may be taxed in the Contracting State in such fees arise and according to the laws of that Contracting State. In these cases, however, the tax so charged shall not exceed the highest rate among the rates of tax to which persons described in the definition of the term "equivalent beneficiary" in sub paragraph e) of paragraph 7 of Article 29 (notwithstanding the requirements referred to in subparagraphs a) and b) of this paragraph) would have been entitled if such persons had received the fees for technical services directly. For purposes of this paragraph, a person described in subdivision (iii) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29 shall be treated as entitled to the limitation of tax to which such person would be entitled if such person were a resident of the same Contracting State as the company receiving the fees for technical services.

Provision on income from automated digital services to be added to Article 12B

> ***Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 8 of this Article, in the case of a company seeking to satisfy the requirements of paragraph 4 of Article 29 of this Convention regarding payments underlying income from automated digital services, if such company fails to satisfy the criteria of that paragraph solely by reason of:***
>
> ***a) the requirement in clause B) of subdivision (i) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29; or***
> ***b) the requirement, in subdivision (ii) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29, that a person entitled to benefits under paragraph 5 of Article 29 would be entitled to a rate of tax with respect to payments underlying income from automated digital services that is less than or equal to the rate applicable under paragraph 2 of this Article;***
>
> ***such company may be taxed in the Contracting State in such payments arise and according to the laws of that Contracting State. In these cases, however, the tax so charged shall not exceed the highest rate among the rates of tax to which persons described in the definition of the term "equivalent beneficiary" in sub-paragraph e) of paragraph 7 of Article 29 (notwithstanding the requirements referred to in subparagraphs a) and b) of this paragraph) would have been entitled if such persons had received the payments directly. For purposes of this paragraph, a person described in subdivision (iii) of the definition of the term "equivalent beneficiary" in subparagraph e) of paragraph 7 of Article 29 shall be treated as entitled to the limitation of tax to which such person would be entitled if such person were a resident of the same Contracting State as the company receiving the payments underlying income from digital services.***

37. Paragraph 9 of the Article corresponds to the general anti-abuse rule [recommended by the OECD/G20 in the Final Report on Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) and] added to the OECD Model Convention as paragraph 9 of Article 29. Therefore, the Committee determined that paragraphs 169 to 186 of the Commentary on paragraph 9 of Article 29 of the OECD Model Convention are also relevant for the purposes of paragraph 9 of this Article. These paragraphs with appropriate modifications to reflect the inclusion of the general anti-abuse rule in paragraph 9 of this Article of the United Nations Model Convention are reproduced below.

…

> 175. The term "benefit" includes all limitations (e.g. a tax reduction, exemption, deferral or refund) on taxation imposed on the State of source under Articles 6 through 22 of the Convention, the relief from double taxation provided by Article 23, and the protection afforded to residents and nationals of a Contracting State under Article 24 or any other similar limitations. This includes, for example, limitations on the taxing rights of a Contracting State in respect of dividends, interest or royalties arising in that State, and paid to a resident of the other State (who is the beneficial owner) under Article 10, 11,

12***[,*** ~~or~~ 12A ***or 12B***]. It also includes limitations on the taxing rights of a Contracting State over a capital gain derived from the alienation of movable property located in that State by a resident of the other State under Article 13. When a tax convention includes other limitations (such as a tax sparing provision), the provisions of this Article also apply to that benefit.

…

39. The OECD Commentary continues as follows ***(the modifications that appear in square brackets, which are not part of the Commentary on the OECD Model Convention, have been inserted in order to provide additional explanations or to reflect the differences between the provisions of the OECD Model Convention and those of this Model)***:

…

187. For various reasons, some States may be unable to accept the rule included in paragraph 9. In order to effectively address all forms of treaty-shopping, however, these States will need to supplement the limitation-on-benefits rule of paragraphs 1 to 7 by rules that will address treaty-shopping strategies commonly referred to as "conduit arrangements" that would not be caught by these paragraphs. These rules would deal with such conduit arrangements by denying the benefits of the provisions of the Convention, or of some of them (e.g. those of Articles 7, 10, 11, 12***[, 12A, 12B]*** and 21), in respect of any income obtained under, or as part of, a conduit arrangement. They could also take the form of domestic anti-abuse rules or judicial doctrines that would achieve a similar result. The following are examples of conduit arrangements that would need to be addressed by such rules as well as examples of transactions that should not be considered to be conduit arrangements for that purpose: