

Distr.: General  
8 October 2021

Original: English

---

**Committee of Experts on International  
Cooperation in Tax Matters  
Twenty-third session**

Virtual meetings of 19 to 28 October 2021

Item 5 (i) of the provisional agenda

**Taxation issues related to the digitalized and globalized economy**

**Secretariat note**

***Summary***

This note addresses possible options for Committee consideration and guidance products on taxation issues related to the digitalized and globalized economy and is *for decision*. It recommends that a smaller group of the Committee, such as the Bureau, or another balanced group of interested Members, consider issues, possible options and working methods and make recommendations to the Committee at the Twenty-fourth session in 2022. The paper also includes a draft Subcommittee Mandate and proposed general composition if a Subcommittee is constituted.

## ***Background***

1. The previous Membership of the Committee formed a Subcommittee on Tax Challenges Related to the Digitalization of the Economy at the Committee's Fifteenth Session in 2017. Its mandate<sup>1</sup> was as follows:

“The Subcommittee is mandated to draw upon its own experience as a body widely representative of affected stakeholders and engage with other relevant bodies, and interested parties with a view to:

- Analyzing technical, economic and other relevant issues;
- Describing difficulties and opportunities especially of interest to the various affected agencies of developing countries;
- Monitoring international developments;
- Describing possible ways forward; and
- Suggesting measures and drafting provisions related to the digitalization of the economy, with regard to:
  - Income taxes;
  - Double tax treaties, and
  - VAT as well as other indirect taxes.

The Subcommittee will report on its activities, recommendations and conclusions at each Committee session with an initial response on issues, possible options and working methods for consideration by the 16th session in May 2018”

2. The previous Subcommittee related only to tax challenges related to the digitalized economy, while the agenda item for the Twenty-third session relates to the “digitalized and globalized” economy, recognizing that many of the issues relate not just to the most highly digitalized businesses, but to multinational enterprises (MNEs) more broadly.

3. Key Subcommittee reports on this issue and progress of the work during Committee sessions are useful as part of the history of this work, but also as indicating some of the issues that may arise for any new work that the Committee might approve. The key elements of that history are attached as an Annex. As noted there, the main outcome of the Subcommittee work was [Article 12B on Automated Digital Services and its attendant Commentary](#) in the 2021 UN Model Double Tax Convention.

4. The key features of Article 12B are:

- It allocates, for treaty purposes, a non-exclusive right for a Contracting State to tax income from certain digital services paid to a resident of the other Contracting State on a gross basis at the rate negotiated bilaterally (with 3-4% recommended);
- It includes the option for the taxpayer to pay tax on a simplified net profit basis for the whole year under paragraph 3 of the Article;
- A Contracting State is entitled to tax payments for automated digital services if the income is paid by a resident of that State or by a non-resident with a permanent establishment or fixed base in that State and the payments are borne by the permanent establishment or fixed base;

---

<sup>1</sup> Originally the mandate included the issue of digitalized tax administration. At the Sixteenth session it was agreed that, despite the importance of the topic, it was not the immediate priority for the Subcommittee and should be removed from the mandate.

- Automated digital services are defined to mean services provided on the Internet or digital or other electronic network requiring minimal human involvement from the service provider.
- In allowing payments in consideration for automated digital services to be taxed by a Contracting State on a gross basis, it allows for a withholding tax to be applied, but does not require it. Therefore, it leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or individual assessment; and
- It does not require any particular threshold, such as a permanent establishment, fixed base, or minimum period of presence, in a Contracting State as a condition for the taxation of income from automated digital services. In this regard, it is based upon the idea that modern methods for the delivery of services allow non-residents to render substantial services for customers in the other country with little or no presence in that country. This ability to derive income from a country with little or no physical presence there was considered sufficient to justify source taxation of income from automated digital services in the treaty allocation of taxing rights. Article 12A on Fees for Technical Services is similarly configured.

### *Wider developments*

5. While increasing numbers of countries are preparing for, or implementing, possible digital services taxes at domestic law, the OECD/ Inclusive Framework (IF) has been working towards a multilateral convention-based approach to addressing various taxation aspects of the digitalized and globalized economy.

6. The status at time of writing was that there is not yet the consensus approach among OECD/ Inclusive Framework (IF) Members envisaged in the OECD Secretariat's 2020 Pillar Report on the Two Pillar Approach<sup>2</sup>, but most of the 140 IF Members have put their names to a 1 July [statement](#)<sup>3</sup> on the way forward for those multilateral negotiations and an 8 October [statement](#) furthering elaborating that pathway. At the time of writing, 8 October 2021, Kenya, Nigeria, Pakistan and Sri Lanka among IF Members had not agreed the latest statement. Most UN Members are IF Members, but many are not.

7. The 8 October [statement](#) contains an implementation plan including negotiations on a multilateral convention and the drafting of Model domestic implementing laws, with the ambitious intent being to have both drafted by early 2022. After the multilateral convention text is settled, it would be opened for signature. Upon ratification of enough parties to bring it into force internationally (the Convention would set that threshold itself), it would enter into force for those countries and (later) for other countries ratifying afterwards. This would be the final step of "implementation", which for many countries would require legislation. Of course it is not possible to assume at this stage that any particular country will or will not become a party to any such convention, or to assume

---

<sup>2</sup> OECD (2020), Tax Challenges Arising from Digitalization – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/beba0634-en>.

<sup>3</sup> This paper refers to the "statements" as such, in their own terms. It is not necessary or appropriate for the purposes of this paper to address the formal status of the IF statements.

with any great level of detail, the likely terms of the convention or of implementing legislation.

8. The G20 meetings in October are also likely to conclude with statements on this process as part of their Communiqués. Again, we cannot presume any particular outcome at such meetings, or any particular consequences to such statements.

9. The Committee will face the issue of whether particular Committee action might (a) positively or (b) negatively impact on these wider processes, by (i) assisting those participating in these developments or advising Ministers on outcomes and options, on the positive side, or by (ii) confusing the issues on the other side or reducing the risk of consensus agreement. The direct or indirect involvement of UN Tax Committee Members in the OECD/ IF negotiations will, however, assist in making sure any Committee engagement with the wider issues is constructive, even though Members participate in the Committee in a personal capacity, not as a country representative. Of course some Members come from countries that have not joined the IF or have joined the IF but have not agreed the October statement.

10. This is an area on which views will vary, reflecting in many respects the more “source/ market country” orientation of the UN Model as compared with some other Models. Even if some market taxation without a permanent establishment is more accepted as part of the treaty “allocation”<sup>4</sup> of taxing rights than in the past (the UN Model was pioneering on this with Article 12A on Fees for Technical Services) there are a great variety of views about how much market taxation (quantum) should be provided for in treaties and on what basis. Despite the difficulties in reaching consensus, these questions are also of central importance to future corporate income tax systems. If the Committee pursues work in this area the most helpful approach might be:

- To ensure that the work is *independent of but informed by* (the approach taken by the previous Subcommittee and Committee) the Inclusive Framework discussions and other developments, such as in regions, including recognizing the various shades of view in any such forum, and especially the views of developing countries;
- *Not to do any work likely to prove meaningless* in view of the fast pace of developments in the Inclusive Framework. Whether this risk is objectively the case should take into account that not all UN Member States are IF Members and we cannot assume all IF Members will adhere to any multilateral convention.
- Focusing on balanced guidance for:
  - *Those* (whether IF Members or not) seeking to analyze *whether they should join any IF led multilateral agreement* or should instead seek an *alternative response* to the digitalized and globalized economy, including by recognizing the possible pros and cons of either course;
  - *Those with UN Model provisions* (such as interest and royalty provisions or Fees for Technical Services provisions in royalties articles or independent Article 12A-like articles) in their treaties or treaty Models, or with automated digital services legislation, when they are seeking to consider how UN Model-consistent legislation and treaties interact with any new rules; and

---

<sup>4</sup> More accurately, the preservation or restriction of the domestic law taxing right being allowed to be exercised in the treaty relationship.

- *Developing country tax policy makers and administrators particularly.*

11. It is unlikely that the Committee could issue swift guidance that would assist countries following the UN Model *in shaping the form of any multilateral convention*, because of the projected speed of that process, recalling that the Implementation Plan for the October Statement assumes a draft Convention and Model legislation by early 2022<sup>5</sup> and the likely difficulty of quickly achieving Committee views on such matters, but that cannot be completely ruled out, especially as some OECD/ IF timelines have already drifted. UN DESA *capacity building* could of course play a positive and constructive role in supporting developing countries in making the important decisions implicit in any such process, including working with regional and other organizations similarly active.

### **Issues**

12. The first issue is that of *the audience* for any Committee guidance. Potential audiences are those from:

- Countries that may be interested in putting in place the underlying domestic law taxation required by Article 12B, but are less focused on treaty issues (such as because they have few tax treaties and do not prioritize expanding the network);
- Countries that may be interested in implementing the underlying domestic law taxation required by Article 12B, but are also seeking preservation of that taxing right in bilateral treaties;
- Countries and other stakeholders seeking a developing country-focused approach to the broader issue of preservation or non-preservation of domestic law taxing rights under treaties that does not depend on a physical PE, for the sake of the sought for stable, fair and effective international tax system.

13. The next issue is possible areas of consideration and guidance. One possibility is further guidance on the domestic law required to represent a taxing right *preserved* (rather than *established*) by Article 12B. It might be thought that there is little scope for such further work on, for example, the basis that the Article 12B-preserved domestic law taxing right would be rendered nugatory by the proposed OECD/ IF Pillar One outcomes.

---

<sup>5</sup> “The TFDE will seek to conclude the text of the MLC and its Explanatory Statement by early 2022, so that the MLC is quickly open to signature and a high-level signing ceremony can be organized by mid-2022. Following its signature, jurisdictions will be expected to ratify the MLC as soon as possible, with the objective of enabling it to enter into force and effect in 2023 once a critical mass of jurisdictions as defined by the MLC have ratified it. .... To facilitate consistency in the approach taken by jurisdictions and to support domestic implementation consistent with the agreed timelines and their domestic legislative procedures, the IF has mandated the TFDE to develop model rules for domestic legislation by early 2022 to give effect to Amount A. The model rules will be supplemented by commentary that describes the purpose and operation of the rules.” IF 8 October [statement](#), pp. 6-7.

Cf. “The deal will be finalized in October 2021, complete with an implementation plan to develop model legislation, guidance and a multilateral treaty in 2022, with implementation from 2023.”: OECD/G20 Base Erosion and Profit Shifting Project Addressing the tax challenges arising from the digitalisation of the economy, July2021, (Introduction) <https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf>

That may ultimately be the case, and it represents a risk in undertaking such work, but it cannot currently be *assumed* as an outcome because:

- No multilateral convention yet exists;
- Many UN Member countries are not members of the Inclusive Framework; and
- Even if the consensus sought for within the IF is achieved, it cannot be assumed that every IF member will join such multilateral agreement as emerges.

14. Such work would not inherently conflict legally with the wider developments and multilateral discussions, since any multilateral convention would give itself “supremacy” over inconsistent treaties of parties to it. So the issues would be more:

- Is there sufficient need, and urgency, especially for developing countries, in such work?
- Would it be perceived as jeopardizing solutions, or instead as enhancing the chances of a result that worked effectively, as simply as possible, and fairly for developing as well as developed countries?
- Would it divert Member and Committee resources from other work, or rather help focus Committee attention on an area of importance over the short, medium and long terms?

15. There are many issues that could be considered by the Committee, and any Subcommittee, on this topic. These could include:

- Further guidance on implementing Article 12B on Automated Digital Services, including guidance on underpinning domestic legislation;
- Possibilities for developing research on economic costs and benefits of various options for taxation of the digitalized and globalized economy, and/ or upon their administrability for developing countries;
- Interaction of the UN Model with domestic, regional and other international proposals – are the interactions fully understood, does the Model need amendment and how do provisions such as the Fees for Technical Services Article relate to international reform proposals currently on the table. Obviously, those decisions would not be made in the Committee, but as custodian of the Model it could draw attention to the linkages and issues under consideration;
- Possible interaction of possible domestic taxation measures designed for a more digitalized and globalized economy with stabilization clauses in contracts and with trade and investment obligations – such as investment obligations that might “uplift” such obligations and require compensation if the stabilization clause is breached, or non-discrimination obligations;
- Possible ways in which the Committee can consider and help articulate the interests of developing countries in relation to the OECD/ Inclusive Framework with a view to ensuring that the concerns and interests of developing countries are taken into consideration;
- Possible ways in which the UN Model could be further updated or guidance provided to recognize a more digitalized and globalized environment, especially for officials in developing countries. It is possible that related issues such as taxation of the “gig- economy” and of internet

gambling could be considered, as important areas where a consensus result is more likely.

16. Many of these issues may be contentious and it may be difficult to find agreement on a way forward. While the Committee has proven adept at taking account of markedly different perspectives on issues such as Articles 12A and 12B, the first issue will be whether the Committee is at this stage in a position to form and mandate a Subcommittee.

***Twenty-third session outcomes?***

17. As to reaching a decision at the Twenty-third session to create a subcommittee, some will consider that there are too many “moving parts” on the digitalized and globalized economy to make a useful contribution at this stage, and may propose a “wait and see” approach for a shorter or longer period. Others will consider that the current period of discussion on possible international tax norms in this area, and the period of negotiations on text for a multilateral convention, is a very opportune time where the Committee could make its most practically effective contributions, before the “cement has set”.

18. A second option is for the Committee to *not* create a subcommittee at the Twenty-third session, and to rather seek guidance from a smaller representative group, such as the Committee Bureau, requesting a report for the Twenty-fourth session. This report would explore further the possible issues and ways, if any, where the Committee can most constructively, independently and in a timely fashion provide guidance in this area, especially for developing countries. It could address Subcommittee composition and mandate.

19. If a Subcommittee *is* formed at the Twenty-third session, one issue will be who should participate. The previous Membership’s Subcommittee was composed of Members of the Committee only, and nearly all Members participated. The advantages of this model are in preserving the balance of the Committee and giving more freedom for discussion at Member level, with any decision at Subcommittee level also inherently likely to be followed at Committee level.

20. The downside of such of an arrangement is that the Subcommittee discussions cannot benefit from the direct involvement and insights of observers from Member States, regional and other international organizations, as well as experts from business and their advisors, academia and civil society. There are options to address this issue in the configuration of the Subcommittee and in how it engages with experts to form its views, including some sessions of Subcommittee meetings having a wider engagement or use of public consultations.

21. Finally, the papers prepared by and for the previous Subcommittee were initially not made public and were discussed in a closed meeting of Members only. But towards the end of its term, the Subcommittee papers and the discussions were more open. With a body of UN work on this issue now existing, and with the high public profile of the issue, public discussion of publically available papers appears the most appropriate option now, with of course the possibility of a closed meeting of the Committee on an issue under this or another agenda item as required.

***Potential UN Tax Committee Value addition***

22. The general value add of the Committee in this area would lie in:

- The diversity of the Committee;
- The developing country orientation of its mandate;
- The understandings drawn from the UN Model and, in particular the pioneering work on Articles 12A and 12B (including the experience expressed in the contrary views expressed in the Commentaries) and
- The Committee's ability to draw upon the expertise of others, including regional and other international organizations (such as the OECD, IMF, World Bank Group and regional and developing country organizations), amplifying the best work, while forming an independent but informed and well-balanced view on issues as necessary and articulating priority issues in the light of the realities and priorities of developing countries.

23. More specifically a particular value add would relate to issues involving the operation of the UN Model Taxation Convention and treaties based upon it in practice. There are many aspects where proposed approaches for addressing the digitalized and globalized economy are based upon the operation of the OECD model and definitions, and consideration by the Committee of the interface with treaties based on the UN Model might be an especially useful contribution to countries following the UN Model, as well as to the wider work.

***Options and Recommendation***

24. The main options for the Committee appear to be:

- (a) Create a Subcommittee at the Twenty-third session to consider these issues and make an initial report at the Twenty-fourth session;
- (b) Ask a representative group of Members (such as the Committee's Bureau) to report back to the Twenty-fourth session on whether a subcommittee should be formed, issues of potential focus, and possible composition (e.g. Committee Members only or a broader grouping) It should provide a draft mandate for decision at the Twenty-fourth session; or
- (c) Decide to take no action as part of the Committee workplan.

25. Option (c) is not recommended at this session. The tax implications of a more digitalized and globalized economy, and the issues raised, are of such significance to all stakeholders in tax systems, including developing country tax administrations, that a decision at the Twenty-third session not to include Committee consideration of this topic as part of its 4-year workplan might appear premature, suggesting the Committee has nothing to contribute on such a significant and current issue.

26. Further, even if the non-consensus October statement of the Inclusive Framework should be overtaken by a consensus statement before the Twenty-third session: it does not imply that those joining it will all necessarily join any resulting multilateral convention (even signature of a finalized treaty does not require that the signatory must ratify and implement the treaty).



27. Obviously any UN work in this area should be respectful of the considerable work done and to be done at OECD secretariat level and decisions at the IF level, but respectful also of any IF Members not joining such a decision and that many countries are not Members. We cannot assume that all IF Members will join any resulting agreement, or that any will not. Any Tax Committee work should reach out to the OECD Secretariat, but also other international organization observers to its work, including regional organizations and developing country international organizations.

28. There is little difference between options (a) and (b) except that the former is likely to involve a larger group initially (more representative but perhaps more difficult to organize meetings for and to reach agreement) and would still require the mandate to be determined at the Twenty-third session. Option (b) gives more time to assess current developments, with the main difficulty being ensuring a sufficiently representative and balanced group considering the issues and reporting to the Committee.

29. The previous Subcommittee was composed of Committee Members only. With greater familiarity with the issues now, and with Article 12B in place, it is recommended that at least a “second circle” of multistakeholder and interdisciplinary experts be set up to consult with Committee Members in a Subcommittee context, even if they did not participate in every part of Subcommittee meetings. The complexity of the issues and the contributions made by regional and other international organizations, country representatives, academics, business, advisers and civil society to current discussions more generally suggest this could add great practical value to the Subcommittee and Committee work.

30. Overall, with the broader situation in flux, leaving the decision of formation of a Subcommittee and, more relevantly perhaps, its composition, areas of focus and mandate to the Twenty-fourth session in April 2022 seems justified, despite the inevitable delay.

31. Because of the delicate situation presently, with events proceeding quickly, but with many important issues still in discussion, even after October, option (b) (report by a representative group of Members to the Twenty-fourth session) is preferred as the most constructive, value added role for the Committee at this stage. If the Committee embarks on this work, it will be important to have some confidence in achieving a result in terms of practical, timely and influential guidance, especially for developing countries, despite the differences that will inevitably exist on the matter.

32. If the sense of the Committee membership is that all members wishing to be involved in an initial group should participate (rather than Bureau or Bureau-plus meeting) the group would most likely be of Committee size, but the other benefits of settling matters at the Twenty-fourth Session would still accrue.

### *Proposed mandate*

33. It is proposed that, if a Subcommittee is formed at the Twenty-third session, the Subcommittee should be given a mandate along the following lines (based upon the mandate for the previous iteration of the Subcommittee):

“The Subcommittee is mandated to consult as it deems necessary and engage with other relevant bodies, and interested parties, with a view to:

- Analyzing technical, economic and other relevant issues;

- Describing difficulties and opportunities especially of interest to the various affected agencies of developing countries;
- Monitoring international developments;
- Describing possible ways forward for Committee work; and
- Suggesting timely and practical guidance, measures and drafting provisions related to the digitalization and globalization of the economy, especially for developing countries in differing situations.

The Subcommittee will report on its activities, recommendations and conclusions at each Committee session with an initial response on issues, possible options and working methods for consideration by the Twenty-fourth session in 2022.”

34. Alternatively, if the Committee decides that a Subcommittee should not at this stage be formed, and that instead a group of Members should report back to the Twenty-fourth session, it should be tasked to report on the possible formation of a Subcommittee, any proposed mandate, possible Subcommittee composition and a broad plan of work.

## **ANNEX: The Work of the Previous Subcommittee on Tax Challenges Related to the Digitalization of the Economy**

The previous Membership of the Committee formed a Subcommittee on Tax Challenges Related to the Digitalization of the Economy at the Committee's Fifteenth Session in 2017. Its mandate<sup>6</sup> was as follows:

“The Subcommittee is mandated to draw upon its own experience as a body widely representative of affected stakeholders and engage with other relevant bodies, and interested parties with a view to:

16. Analyzing technical, economic and other relevant issues;
17. Describing difficulties and opportunities especially of interest to the various affected agencies of developing countries;
18. Monitoring international developments;
  - Describing possible ways forward; and
  - Suggesting measures and drafting provisions related to the digitalization of the economy, with regard to:
    - Income taxes;
    - Double tax treaties, and
    - VAT as well as other indirect taxes.

The Subcommittee will report on its activities, recommendations and conclusions at each Committee session with an initial response on issues, possible options and working methods for consideration by the 16th session in May 2018”

2. [E/C.18/2018/CRP.12](#) was submitted by the Subcommittee Coordinators in preparation for the Seventeenth session of the Committee held in October 2018 in Geneva and discussed the basic approach for the Subcommittee and suggested a way forward. It considered some new business models that rendered obsolete the concept of permanent establishment (PE), which has been used as a basis for taxation of profits earned by multinational enterprises (MNEs) in different jurisdictions. In addition, the paper raised the following aspects: 1) identification of the main concerns and interest of developing countries, taking into account the varying features of their economies; 2) analysis of short-term versus long-term measures; and 3) consideration of the consequences that policy decisions might have on other business sectors.

3. [E/C.18/2019/CRP.12](#) was submitted in preparation for the Eighteenth session held in New York in April 2019 and reflected the results of a Subcommittee held in Paris in January 2019. The note contained a Paper drafted by a drafting group formed during the meeting in Paris. It contains the guiding principles for the work of the Subcommittee agreed during that meeting:

- Avoiding both double taxation and non-taxation;
- Preferring taxation on a net basis where practicable;
- Seeking simplicity and administrability.

---

<sup>6</sup> Originally the mandate included the issue of digitalized tax administration. At the Sixteenth session it was agreed that, despite the importance of the topic, it was not an immediate priority for the Subcommittee and should be removed from the mandate.

It also noted the challenges to existing nexus rules under tax treaties due to digitalization of the economy and discussed whether value creation is the appropriate basis for attributing taxing rights for the interest of developing countries.

4. [E/C.18/2019/CRP.16](#) was submitted in preparation for the Nineteenth session held in Geneva in October 2019. It reflected the results of the discussions during the 18th Session held in April in New York, where it was agreed that a paper would be drafted for presentation at the 19th session of the Committee:

- (a) Including an explanation and evaluation of proposals internally developed or developed in other forums;
  - (i) Describing the advantages and disadvantages of the abovementioned proposals;
  - (ii) Giving special attention to:
    - a. The interests of developing countries;
    - b. Administrability, fairness and certainty;
  - (iii) Taking into account different economies and market forces;
  - (iv) Without losing sight of the principles agreed at the meeting of the Subcommittee held in January 2019, as indicated in paper [E/C.18/2019/CRP.12](#);
- (b) Considering, where relevant, expert commentaries on issues relating to the digitalized economy;
- (c) Aiming at finalized proposals within the term of the current membership of the Committee.

5. The proposed parts to be included in the paper were as follows:

- 1. Introduction, general background, reasons for the work and guiding principles;
- 2. Relevance and analysis (advantages and disadvantages) of work in other forums:
  - (a) Inclusive Framework on Base Erosion and Profit Shifting;
  - (b) International Monetary Fund;
  - (c) European Union;
  - (d) African Tax Administration Forum;
  - (e) Others;
- 3. Possible alternative or modified approaches for allocation of taxing rights and nexus rules, including withholding taxes;
- 4. Conclusions.

6. CRP.16 contained an introductory Chapter in which, based on the discussions during the Eighteenth session and on the ongoing international debate, fundamental questions were raised to help form the basis for decisions on the further work to be done. It also contained a Chapter describing recent developments in other international bodies.

7. For an agreed Chapter on possible alternative or modified approaches for allocation of taxing rights and nexus rules, including withholding taxes, no contributions were at that stage received.

8. CRP.16 was discussed in the Subcommittee meeting held in the context of the Nineteenth session but was not finalized and, while forwarded to the full Committee, was never formally discussed in the full Committee.
9. A large part of the time devoted to this issue during the Committee's 19<sup>th</sup> session was therefore dedicated to the (then) recently published Inclusive Framework's "Unified Approach". It was decided during the meeting that comments on the Unified Approach would be submitted in the name of the Committee.
10. CRP.16 was discussed in the Subcommittee meeting held in the context of the 19<sup>th</sup> Session but was not finalized and, while forwarded to the full Committee, was never formally discussed in the full Committee.
11. A large part of the time devoted to this issue during the Committee's Nineteenth session was instead dedicated to the (then) recently published Inclusive Framework's "Unified Approach". It was decided during the meeting that comments on the Unified Approach would be submitted in the name of the Committee, as part of the OECD Secretariat'.
12. [E/C.18/2020/CRP.25](#) was submitted in preparation for the Twentieth session held virtually in May 2020. It included an overview of the work so far done and it attached the comments submitted to the OECD Secretariat for its public consultation on the Unified Approach - as agreed after an exchange of view between the members of the Committee. It also attached a note written by Mr. Rajat Bansal, then of the Committee, describing a new proposal to attribute additional taxing rights to supplement resources of developing countries.
13. At the same session, Mr. José Troya, also then of the Committee, re-presented some unpublished comments made to the Committee at the Eighteenth Session which related to alternative approaches to taxing the digitalized economy for developing countries. All such comments by Members should be treated as made in their personal capacity, in which they act.
14. During the Twentieth session it was decided that a Drafting Group would be formed, consisting of 13 (later 14) members of the Committee seeking consideration of an additional provision in the UN Model Tax Convention to deal with certain aspects of taxation in an increasingly digitalized economy. That Drafting Group, initially coordinated by Committee members Mr. Carlos Protto and Mr. Rajat Bansal, presented a proposal for a new Article 12B ("Income from Automated Digital Services") to be included in the UN Model. It was circulated to all members and was published on the UN Website together with an explanation of the status of the Draft.
15. A number of Committee members submitted comments on the draft and the Drafting Group replied to these comments. The draft and the comments were discussed during a virtual meeting of the Subcommittee held on the 25, 26 and 27 August 2020. Unfortunately, not all parts of the proposed Article, the proposed Commentary and the submitted comments could be discussed in the time available.
16. It was decided that it would be useful for the Drafting Group to continue its work and prepare an amended draft taking into account the comments submitted by members and observers as far as the drafting group considered them an improvement of their draft.

17. It was also agreed that the Co-Coordicators, in their Report to the Committee, would annex the draft (recognizing that while there was considerable support for the proposal it was not yet an agreed document and was without prejudice to the position of any of the members of the Subcommittee).

18. At the Twenty-first session, the Committee was invited to discuss the amended Draft included in Annex 1 to [E/C.18/2020/CRP.41](#) and on the submitted comments summarized in that note and its attachments and to take such decisions as it saw fit on how best to take the matter forward including on the proposed text. As indicated in the report of that Session<sup>7</sup>:

“After discussing the way forward, members voted to include an article 12B on automated digital services in the 2021 Model Convention at its twenty-first session, in line with the drafting group proposal. At its twenty-second session, the Committee would be asked to finalize the text of the article and commentary”

19. The Subcommittee further considered the issue at virtual Subcommittee meetings of 14-16 December 2020, 22-26 February and 30 March 2021, at which the text of the Article and its Commentary were further developed, including through including the expression of alternative views. The Annex to note [E/C.18/2021/CRP.1](#), presented for consideration at the Twenty-second session, was the result of that work.

20. At the same session, the final text of Article 12B and its Commentary as annexed to [E/C.18/2021/CRP.1](#) were approved with slight amendments and consequential amendments in the Model Tax Convention were also agreed. As recorded in the report of that session, the secretariat noted that such approval and adoption did not by any means suggest that every member of the Committee agreed with the inclusion of article 12B in the Model Convention: there were strongly held views opposing the inclusion, which formed a large minority, as indicated in the commentary. Therefore, the issue for the session had effectively been whether members were satisfied that their views were adequately reflected in the commentary. A consensus approval, when arrived at, would therefore not be unanimously favouring article 12B but would rather recognize the majority view (with options and alternatives) in favour and agreeing that the text adequately reflected the differences on that point, as well as the reasoning behind the different views.

21. The text of Article 12B and its Commentary, as approved by the Committee, and which will be included in the 2021 version of the UN Model Tax Convention, can be found [here](#).

22. The key features of Article 12B are:

- It allows a Contracting State to tax income from certain digital services paid to a resident of the other Contracting State on a gross basis at the rate negotiated bilaterally;
- It includes the option for the taxpayer to pay tax on a net profit basis for the whole year under paragraph 3 of the Article.
- A Contracting State is entitled to tax payments for automated digital services if the income is paid by a resident of that State or by a non-resident with a permanent establishment or fixed base in that State and the payments are borne by the permanent establishment or fixed base.

<sup>7</sup> E/2021/45/ADD.1-E/C.18/2020/4, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/374/60/pdf/N2037460.pdf?OpenElement>

- Automated digital services are defined to mean services provided on the Internet or digital or other electronic network requiring minimal human involvement from the service provider.
- In allowing payments in consideration for the automated digital services to be taxed by a Contracting State on a gross basis, allowing for a withholding tax to be used, but not requiring it. Therefore, it leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or individual assessment.
- It does not require any particular threshold, such as a permanent establishment, fixed base, or minimum period of presence, in a Contracting State as a condition for the taxation of income from automated digital services. In this regard, modern methods for the delivery of services allow non-residents to render substantial services for customers in the other country with little or no presence in that country. This ability to derive income from a country with little or no physical presence there was considered sufficient to justify source taxation of income from automated digital services.