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

Geneva, 18-21 October 2022

Item 3(c) of the provisional agenda

**Issues related to the United Nations Model Double Taxation Convention between
Developed and Developing Countries**

Co-Coordinator's Report

Summary

At its 23rd Session, the Committee of Experts established the Subcommittee on the Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries and agreed on certain priorities for the Subcommittee's work during this Membership of the Committee of Experts.

At its 24th Session in April 2022, the Committee approved the Subcommittee's proposed plan on how to take forward work on those priorities, as well as on several other issues raised by participants in the Subcommittee.

This note is provided to the Committee ***for information*** at its 25th Session. The Subcommittee has also produced two notes for discussion, *Proposal for the inclusion of a general "subject to tax" rule in the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2022/CRP.23) and *The inclusion of computer software in the definition of royalties* (E/C.18/2022/CRP.24).

Scope and Priority of Work as Established by the Committee of Experts

1. At its 23rd Session, the Committee of Experts on International Cooperation in Tax Matters considered note [E/C.18/2021/CRP.22](#), on the work relating to the United Nations Model Double Taxation Convention between Developed and Developing Countries (the UN Model). That note described the work on a proposal to include payments for computer software within the definition of royalties in Article 12 of the UN Model, as well as a number of additional issues that had been identified by the last Membership of the Committee but which that membership had not had a chance to address.

2. The additional issues listed in the note were:

- (a) Article 5 (6) of the United Nations Model Double Taxation Convention between Developed and Developing Countries, Permanent establishment with respect to insurance activities, including the treatment of reinsurance;
- (b) Article 3, reference to the mutual agreement procedure for interpretation of undefined terms;
- (c) Commentary on articles 7, 9 and 25, self-initiated adjustments;
- (d) Time limits for profit adjustments under articles 7 and 9;
- (e) Changes to article 25 (Mutual agreement procedure);
- (f) Amendments to the commentary on article 15 related to payments made upon termination of employment;
- (g) Clarifications on the application of article 17 (Artistes and sportspersons);
- (h) Tax treaty issues relating to emissions permits/credits;
- (i) Possible issues related to article 1 (2) dealing with transparent entities;
- (j) Application of the Model Convention to sovereign wealth funds;
- (k) Treatment of accrued interest in the commentary on article 11;
- (l) Tax treaty provisions related to the exploration and extraction of natural resources;
- (m) To what extent a tax treaty can result in increased taxation;
- (n) Whether the mutual agreement procedure should deal with issues that had already been decided by the courts of one of the States (i.e., it is noted in note E/C.18/2020/CRP.37 that, while the commentary on article 25 already indicates that the competent authorities of a contracting State may be constrained by a court decision rendered in that State, it suggests that access to the mutual agreement procedure cannot in that case be denied without the situation of the other competent authority being directly addressed. It has been suggested that this question should be examined);
- (o) Whether article 8 should be fundamentally revised, including as to the treatment of shipping income from international traffic;
- (p) Interaction between article 21 (3) and the source rule of article 18, alternative B.

Four other issues identified by current or former Committee Members as possible work areas were: a technical issue relating to a re-draft of Article 13(6); determining profits of a permanent establishment under Article 7; introduction of a subject-to-tax-rule; and modification of the distributive rules of Articles 6 and 13(1) for income and gains from immovable property.

3. The Committee established a Subcommittee on the Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries with the following mandate:

The Subcommittee is mandated to consider, make recommendations and provide proposed drafting for the next update of the United Nations Model Double Taxation Tax Convention (the Update) focusing on issues of the most relevance to developing countries.

The Subcommittee will report on its work to the Committee at its twenty-fourth session in 2022, and at each session thereafter, with a view to making a recommendation as to the timing and content of the Update no later than the Twenty-ninth Session in 2024. In undertaking its work, the Subcommittee may wish to consult with relevant stakeholders.

Additionally, the report of the 23rd Session notes the following areas of agreement regarding the Subcommittee's work program:

29. On priorities, there was general agreement that the Committee should focus on issues with the most impact for developing countries as well as technical issues arising from specific UN Model provisions. Low or no priority should be given to changes to align with the OECD Model unless they represent an issue of practical importance for developing countries.

30. The issues that were identified as initial Subcommittee priorities are:

- Carrying forward the work on computer software;
- Tax treaty provisions related to exploration and extraction of natural resources;
- Whether article 8 should be fundamentally revised, particularly with respect to income from shipping activities;
- Provision of services, particularly the physical presence tests of articles 5(3)(b), 14 and 15, and guidance regarding the interaction of those provisions with articles 7, 12, 12A and 12B;
- Possible introduction of a subject-to-tax rule;
- International insurance activities; and
- A technical issue on interaction of article 21(3) and the source rule of article 18, alternative B.

4. At the 24th Session, the Subcommittee proposed a work program to address those priorities, describing the process by which the work on each topic would be undertaken and providing the following rough order in which issues would be submitted to the Committee for consideration:

- Inclusion of Payments for Computer Software in the Definition of Royalties
- Introduction of a Subject-to-Tax Rule in the UN Model
- Extractives and Other Natural Resources
- The Treatment of Services, Including Issues of Overlap
- International Shipping Activities
- Income derived from Cross-Border Insurance Activities
- Other Issues

Progress Made by the Subcommittee on its Work Program

5. The Subcommittee has held two virtual meetings since the 24th Session, on 9-10 June 2022 and 12, 16 and 27 September 2022.

6. At the June meeting, the Subcommittee had a first discussion of an issues paper regarding the possible scope of a subject-to-tax rule and how to address various issues on which there is not agreement. At its September meeting, the Subcommittee reached agreement on a note (E/C.18/2022/CRP.23) asking for the Committee's comments on its proposed approach.

7. The other major topic at the June meeting was the proposal to include payments for the use of computer software within the definition of royalties in Article 12. The Subcommittee had a productive discussion of a series of examples regarding the possible scope of such a provision. However, at the September meeting, it became clear that it would be necessary to take a step back to determine where there currently is agreement and disagreement regarding the application of the current definition in Article 12 with respect to computer software. There was agreement within the Subcommittee that the goal of any work in this area should be to provide certainty to governments and taxpayers regarding when payments for the use of computer software will be treated as royalties within the meaning of Article 12. However, there are a number of different views regarding how to achieve such certainty, given that there is not agreement on when payments for computer software currently are covered by Article 12. Accordingly, the Subcommittee prepared a document (E/C.18/2022/CRP.24) to ask for further guidance from the Committee before continuing this work.

8. The Subcommittee considered two additional papers at the June meeting, one on the scope of various services provisions already included in the UN Model and the other on issues relating to Article 6 on immovable property. The Subcommittee will continue working on both those issues and report back to the Committee if and when it has proposals regarding possible changes to the Model text or the Commentaries.

Future Meetings of the Subcommittee

9. The Subcommittee plans to meet twice before the 26th Session of the Committee.

Requested Input from the Committee

10. In the two documents submitted to the Committee, the Subcommittee has asked for the Committee's guidance on several specific questions; it also welcomes any additional Committee comments.

