Comments on the first question of the DISCUSSION DRAFT: Possible Changes to the United Nations Model Double Taxation Convention Between Developed and Developing Countries Concerning Inclusion of software payments in the definition of royalties.

Dear Colleagues,

Please find below short comments in blue on the first question from business practice in Republic of Kazakhstan:

"Is the description of "software" in paragraph 12.1 of the Commentary on Article 12 of the OECD Model (extracted in paragraph 12 of the proposed UN Commentary)
(a) consistent with current business practice …? "

Yes, definition in paragraph 12.1 of the Commentary on Article 12 is consistent with current business practice from Kazakhstan. Software is protected under Copyright Law in Kazakhstan (Article 7). The following definition of "software" is provided in Kazakhstani Copyright Law in Article 2.40) "Definitions":

"Computer software is a set of instructions, expressed in the form of words, diagrams or in any other form, written on a computer-readable material (medium) that ensures that the computer performs or achieves a certain task or result, including preparatory materials that will result creation of software at a later stage".

Just for information purposes, Kazakhstan has 54 income tax treaties currently and 35 of them have specific reference to "computer software" in Article 12 "Royalties".

b) appropriate for use as a definition in this context, perhaps by adding the definition to Article 3

Probably no need to add definition of "software" to Article 3 of the UN Model. Each country may have its own definition of "software" in their domestic legislation. Moreover, definition may change over time in country's domestic legislation and thus, definition of a "software" in tax treaty and domestic legislation may differ. Different definitions may bring uncertainties to taxpayers which definition to use.

Kind regards,
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