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**Committee of Experts on International
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**Update of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between
Developed and Developing Countries**

Proposed Guidelines on Conducting Tax Treaty Negotiations by Videoconference

Summary

This note is presented to the Committee for *final approval*.

At its Twenty-fifth Session, the Committee had a first discussion of [E/C.18/2022/CRP.27](#), which provided possible guidelines for the conduct of tax treaty negotiations through videoconferencing. Members and Observers made substantive comments, which are reflected in the revised guidelines.

The Subcommittee proposes issuing the guidelines as stand-alone guidance from the Committee.

The Subcommittee also proposes that the substance of the guidelines be incorporated into Section II of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, which deals with the logistics of tax treaty negotiations. The Committee is separately being asked to approve Sections I to IV of the Manual, in E/C.18/2023/CRP.18.

The Committee is invited to give *final approval* to the revised guidelines below.

GUIDELINES FOR THE CONDUCT OF TAX TREATY NEGOTIATIONS BY VIDEOCONFERENCE

I. Introduction

1. Prior to 2020, most tax treaty negotiations were conducted face-to-face, with countries alternating hosting and travelling responsibilities. Typically, the two sides might meet every six months, sometimes more often if there was some urgency to concluding the negotiations. Between meetings, the teams often would exchange background materials and drafting proposals intended to overcome differences between the two parties' positions. The teams might also have participated in teleconferences or, occasionally, videoconferences in order to make progress between in-person meetings.

2. The limitations on travel that accompanied the COVID-19 pandemic have greatly accelerated a trend towards greater use of videoconferencing for meetings that might otherwise have taken place in person. This includes some tax treaty negotiations or treaty-related discussions. It is likely that some governments will continue to encourage the use of videoconferencing in the future as a cost-effective, environmentally-friendly, alternative to the traditional approach to tax treaty negotiations (and other meetings).

3. This report therefore provides guidance on a number of points relating to conducting tax treaty negotiations through videoconference. The next section discusses the circumstances in which in-person meetings will be more productive and those in which videoconferencing is an adequate, or even preferable, alternative. The third section of the report discusses various logistical issues that the negotiators should take into consideration in conducting such negotiations.

II. The Benefits and Disadvantages of In-Person Discussions and Videoconferencing

4. Certainly the use of videoconferencing is significantly less expensive than traditional in-person negotiations and has some advantages in terms of simplified logistics. There is no need to arrange for travel and accommodation or visas or, from the host state's perspective, hospitality for the visiting delegation. Some countries have concluded a number of treaties through virtual negotiations, in large part due to the flexibility in scheduling such negotiations. Videoconferencing can also allow for larger delegations than might be able to travel for in-person negotiations, allowing recourse to specialists on technical issues, such as financial products or pensions, and, more generally, for training of junior staff.

5. Some negotiators, however, have found that it is harder to conclude a tax treaty through videoconferencing. Some negotiators point out that in-person negotiations allow for reading the body language and facial expressions of the entire counterparty team and responding quickly to that team's reactions. Videoconferences provide less in the way of such visual cues, as sometimes only the head of delegation is on-camera or there may be poor connectivity or distractions. Furthermore, the give-and-take of negotiations often is slowed through the lag time to switch on the microphone to speak or, again, connectivity problems that can make it difficult to understand the tone and substance of a speaker's comments. Accordingly, the experience of some countries is that negotiations have tended to go more slowly. These difficulties might be more easily overcome when both sides are eager to conclude a treaty and/or have similar tax treaty policies.

6. Another factor to be considered in deciding between in-person negotiations and those by videoconference is that the traditional schedule itself can create pressure to make progress or conclude the agreement during the course of the meeting. In addition, an in-person meeting effectively creates a “bubble” and allows for intense focus by both teams on reaching an agreement. Those engaged in videoconferences frequently do not enjoy the opportunity to focus on that negotiation and are expected to continue to make progress on other work at the same time; the need to respond to office colleagues or external demands was also cited as a reason that progress was slower during videoconferences (although others noted that members of the host delegation usually are similarly required to attend to other duties even in the case of in-person negotiations).

7. The preceding discussion assumes that both teams have adequate resources and technological expertise to conduct negotiations by videoconference, which may not be the case. Accordingly, notwithstanding the significant time and cost savings and environmental benefits, it seems clear that videoconferencing cannot be a complete substitute for in-person negotiations.

8. It is therefore recommended that countries adopt a “hybrid” approach, negotiating in person when that approach would be most effective, but supplementing those negotiations with meetings held by videoconference when possible. For example, experiences over the course of the last several years show that meetings held through videoconferencing are more successful when the parties know each other and have developed some mutual trust. This suggests that in-person negotiations may be more important at the beginning of the negotiations and that the parties can agree to switch to videoconferencing later in the process.

9. On the other hand, videoconferencing can be useful before negotiations start, when the two parties are having exploratory talks by exchanging information about each other’s domestic laws and tax treaty policies. Some negotiators have noted that holding such initial talks had in some cases made it clear that the two parties’ treaty policies were so far apart that successfully concluding a treaty would be unlikely. Accordingly, in those cases the low-stakes discussions by videoconference had conserved scarce resources because the parties never began formal negotiations that likely would have failed.

10. Even if a negotiation primarily takes place through in-person meetings, videoconferencing can be a useful supplement in particular circumstances. One example is with respect to the discussion of specialized issues, such as the treatment of pensions or of financial products, where it would not be cost-effective to bring a subject-matter expert to an in-person meeting. Another is when just a few issues remain unresolved after several in-person rounds of negotiation.

III. Logistical Issues relating to the Conduct of Tax Treaty Negotiations by Videoconference

11. The conduct of tax treaty negotiations by videoconference should, as much as possible, resemble the conduct of in-person negotiations. There may be a greater degree of informality in negotiations held by videoconference when some team members are participating from home. In any case, it is important to observe the traditional formalities and ensure the confidentiality of the proceedings. The rest of this section provides suggestions for how to do so with respect to various aspects of the proceedings.

Agreeing on the Videoconferencing Platform

12. The negotiators will need to agree on a videoconferencing platform on which the negotiations will take place. This decision must take into account any information technology security policies in place in the two countries. It would not be surprising if there were government-wide restrictions in force

that included stricter policies for government-to-government negotiations than those in force with respect to the day-to-day activities of the ministries or departments involved in the negotiations. Once the negotiators have agreed on the videoconferencing platform, the countries should agree on the responsibilities for scheduling the meetings, taking into consideration which countries have access to the desired platform.

13. Many videoconferencing platforms provide the option of recording meetings. While recording may prompt a more cautious approach to the negotiations, some countries may find it helpful to review recordings of the negotiations after they take place in order to ensure that they have understood the arguments being made by the negotiators for the other country. This may be particularly important for countries negotiating in a language that is not their native language. The parties therefore should agree on whether the sessions will be recorded and, if so, who will control the recordings, how the confidentiality of the recordings will be maintained, and the purposes for which recordings may later be used. The parties may also agree that the recordings should be deleted after the negotiations have been concluded or a certain time period has elapsed. Agreements on these issues should be documented in writing.

Duration of Negotiating Sessions and Time Zones

14. In-person negotiations usually consist of two negotiation sessions each day, each of three or so hours. Various aspects of videoconferencing make it much more tiring so that there are likely to be diminishing returns from extended negotiations. Therefore, negotiations through videoconference should be short – most likely three to four hours a day for three to four days at a time. As a result, it may take longer than a week to complete a single “round” of negotiations and teams may want to plan in advance for an extended schedule that ensures time for a full discussion of the issues.

15. The schedule of sessions should take into account the time zones of each country. If it is not possible to schedule the sessions during normal working hours for both teams, “hosting” duties should alternate with each “round” of negotiations so that the burden of early mornings or late nights is shared evenly between the two teams. If a negotiation is taking place outside a team’s normal working hours, the team may want to check on the availability of IT support in case there are problems.

Location of the Negotiating Team

16. A clear distinction should be drawn between negotiations conducted through videoconferencing and dispersed working methods. Trying to conduct negotiations in the latter situation presents disadvantages in addition to those described above with respect to videoconferencing generally and is not recommended.

17. During in-person negotiations, communication among team members takes place seamlessly. Team members may write notes to the head of delegation, emphasizing particular points. When consultations are necessary, perhaps to consider a proposal put forward by the other team, it is easy to call a short break and then re-convene when both sides are ready. When negotiations are conducted by videoconferencing, the teams will need to carefully plan how communications among team members will take place.

18. There is much to be gained from ensuring a negotiation team is physically located in the same place. Doing so facilitates internal communications among the team members, supporting their own organization and performance. Team members can have much the same interaction with the head of delegation as in in-person negotiations, making it easier for that person to present their arguments to

the other side in an organized fashion. This maximizes the chances, under these circumstances, of having a coherent discussion with the other side and reaching an agreement. It also provides an opportunity for junior staff to contribute and learn from the experience.

19. Therefore, participation by members of the negotiating team from multiple locations is by far a second-best alternative that should only be adopted in exceptional circumstances, such as a pandemic. Apart from the loss of the benefits described in the preceding paragraph, it can be difficult for the head of delegation to control the negotiation space (by, for example, ensuring that non-members of the delegation do not enter the room and that only one microphone is open at a time) when the team is separated. In case it is not possible for the negotiating team to be in a single location, the members of the team must be able to communicate among themselves, establishing a second channel of secure communication accessible only to them. Often, this may be achieved through use of a secure messaging app on a smartphone. Team members might also set up a private chat among themselves on an office platform separate from the platform being used for the negotiations themselves. Negotiators generally should not rely on the direct message facility in the platform being used for the negotiations; it is not uncommon for such direct messages to be incorrectly addressed and doing so in these circumstances could disclose confidential information or positions to the other negotiating team.

20. If the negotiating team is together in a conference room, the team will have to decide whether to use a single camera/computer that shows the entire team or whether each team member will use an individual computer or, if technologically possible, some combination of the two. Depending on the sophistication of the technology, using just one camera with a wide view to encompass an entire team may reduce the possibility of perceiving body language and reactions during the negotiations and also may make it more difficult to hear the person speaking. Consequently, the use of individual computers is preferable, but may require team members to use headphones to avoid echoes and/or feedback.

21. Control of access to the virtual “room” is as important as in in-person negotiations. Delegation lists (including the names of any staff who will provide platform support) should be exchanged well in advance of the negotiations. If the members of the negotiating team are on individual computers, the naming conventions for their screen names should make it easy to identify everyone and confirm that they were on the delegation list. Nevertheless, the head of delegation should introduce each member of the team as in an in-person negotiation. As would be good practice whether negotiations are in-person or by videoconference, if a team plans to invite a specialist to discuss particular issues, that intention should be made known to the other team in advance so that they can make arrangements for their own specialists to be available.

22. If team members are participating in the negotiations from their homes or other locations, there are greater security concerns. Home networks may not be as secure as those at the office. Other people may be within earshot. Team members can take some steps to address these concerns. For example, team members should not turn off their cameras for extended periods during the negotiations, both as a mark of courtesy and so that the other team knows who is present. If there are bandwidth issues that can be addressed by turning off a team member’s camera, the other negotiating team should be notified and be as accommodating as possible.

23. Teams should check the equipment (including loudspeakers) in advance. In some circumstances (for example, if bandwidth may be a problem) it may be advisable to do an IT check with the other team in advance, replicating as closely as possible the conditions at the time of the negotiations. Practical experience has shown that the placement of microphones and avoiding extraneous noises, such as papers moving close to the microphone, are especially important.

The Language in Which Negotiations will take Place

24. Although many negotiations take place in a “common language”, some countries may be more comfortable using interpretation to ensure that they fully understand the arguments being made by the other side. Videoconferencing tools may in some cases make the use of interpreters easier. If interpretation is to be used in a negotiation, the negotiating team should contact the interpreters as soon as possible to determine what modifications to normal working methods might be necessary.

25. In particular, the team and interpreter will have to decide whether the interpreter(s) will be in the same room as the negotiating team or whether they will use the interpretation function available in some videoconferencing platforms which allows the interpreter to be located elsewhere. If the interpreters are not in the same room as the negotiating team, the heads of delegation and any others speaking during the negotiation should be prepared to use a headset or other microphone during the negotiations in order to facilitate the interpretation.

26. While a single interpreter may be sufficient for in-person negotiations, the more tiring nature of interpreting for videoconferencing may mean that more than one interpreter is required. The negotiators should agree in advance on which country will bear the cost of interpretation.

Use of Screen Sharing

27. It has become common practice during in-person negotiations to have the draft convention projected onto a screen so that changes to the text can be made as they are agreed. Many negotiators find this a very valuable practice as a merged text highlights both the areas of agreement and where differences remain to ensure that both teams share a common understanding of the state of the negotiations. When negotiations are held in person, the room can be set up to ensure that this practice does not affect the ability of the negotiators to read each other’s reactions during the back-and-forth of negotiations.

28. However, when negotiations are conducted through videoconferencing, the equivalent practice would be to have the draft text shared on-screen throughout the negotiation. This is not advised, as screen-sharing generally limits the ability to see all of the members of the delegation (and presents them in thumbnails rather than full-screen), which can affect the fluidity of the negotiations. Accordingly, teams should consider the costs and benefits of using a merged text and will have to agree on the extent to which they will use screen sharing during the course of negotiations. Teams may want to have an initial discussion of the issues without screen sharing. The “host” state could be responsible for making any changes as they are agreed and then the draft document could be shared on-screen to confirm that it accurately reflects the parties’ agreements and open issues.

Agreed Minutes and Initialing

29. At the end of a round of in-person negotiations, it is common practice for the two heads of delegation to sign a short “agreed minute” on the status of the negotiations, which will usually have the draft treaty text attached. While some countries do not do so with respect to negotiations held through videoconference because the “rounds” are less definitive, other countries consider the use of agreed minutes to be equally important for negotiations held through videoconference to ensure a common understanding between the parties. The negotiators therefore should agree on whether they intend to draft agreed minutes for rounds conducted through videoconferencing and, if so, how that process will take place.

30. When the negotiators have concluded the negotiations and agreed on a final text, it is traditional to have the negotiators “initial” the document. Unlike the signing of a treaty, initialing has no legal consequences under international law, but is understood to mean that the negotiators have reached a deal. That deal should be memorialized so that each team can begin the post-negotiation process of preparing the document for signing. To do so, when the agreement has been concluded by videoconference, the “host” team should print the agreed text, the head of delegation should sign the cover sheet and initial each page, and then the document should be scanned and sent to the other team. That head of delegation should sign the cover sheet and initial each page, after which the document, with both sets of initials, should be scanned and sent back to the original team so that each team has a copy of the same version of the document with both sets of signatures and initialed pages. It should be noted that the use of a scanned document (and not an editable document) avoids possible disagreement on the version that was agreed upon.