

Distr.: General
18 March 2022

Original: English

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

Virtual meetings of 4-7 and 11-12 April 2022

Item 3 (i) of the provisional agenda

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

Co-Coordicators' Report

Summary

This paper is *for information and discussion* and indicates the following workstreams of the Subcommittee on Taxation Issues Related to the Digitalized and Globalized Economy:

- **Workstream A** will consider options for a more multilateralized form of implementing Article 12B of the UN Model Tax Convention (Automated Digital Services) and perhaps also a limited number of other optional provisions (such as Article 12A of the UN Model, or a Subject to Tax Rule) as may be potentially relevant to taxing the digitalized and globalized economy; and
- **Workstream B** will consider the function and relevance or otherwise of physical presence tests (such as under “permanent establishment” rules) in the context of an increasingly digitalized and globalized economy.

Both workstreams will develop options for consideration by the Committee designed to provide guidance that will particularly, but not exclusively, assist developing countries in this area.

The Subcommittee seeks *the Committee's views on the issues raised in this note.*

Background and Subcommittee Mandate

1. At the Twenty-third Session of the Committee in October 2021, the secretariat provided a paper on taxation in a digitalized and globalized economy ([E/C.18/2021/CRP.28](#)). That paper provided an outline of the work of the previous Subcommittee on Tax Challenges Related to the Digitalization of the Economy, including with regard to Article 12B on automated digital services and its Commentary, which now form part of the [2021 United Nations Model Tax Convention](#).

2. As noted in the [Report of the Twenty-third Session](#), after some discussion the Committee established a Subcommittee on Taxation Issues Related to the Digitalized and Globalized Economy, with Mathew Gbonjubola and Liselott Kana as Co-Coordinator. The mandate is as follows:

The Subcommittee is mandated:

- To identify priority taxation issues related to the digitalized and globalized economy where the Committee may most usefully assist developing countries in differing situations, in particular
- To initially report to the Committee on such issues no later than its Twenty-fourth Session, in 2022, with recommendations for consideration and a proposed general programme of work

The Subcommittee may consult broadly, taking into account relevant work by other bodies.

First Meeting of the Subcommittee

3. Fifteen Members of the UN Tax Committee are participating in the Subcommittee, and a meeting of the Subcommittee so constituted was conducted virtually on 10-11 March 2022 to consider its composition and workplan. This report reflects the outcome of those discussions. Not every Subcommittee participant agreed with every aspect of the approaches agreed in the Subcommittee, and recognizing diverse views will be an important part of the Subcommittee work going forward.

Composition of the Subcommittee

4. As noted above, fifteen Committee Members participate in the Subcommittee. In view of the size of that participation and the diversity of backgrounds and perspectives involved, the Subcommittee decided that the regular participation of the Subcommittee should remain as it is currently, comprised of Committee Members only. The specialist expertise that exists among other participants in the UN Tax Committee work, including observers from countries, business and their advisers, academics and civil society, and the value of their perspectives, was readily acknowledged, however, and it was also agreed that a focused outreach to such experts would be an important part of the Subcommittee work.

5. There are many possible ways in which this balance can be best achieved, including ad hoc participation of non-Committee Member experts in Subcommittee meetings, calls for written inputs and specific dialogue meetings with experts. In further refining its “outreach” strategy, which may vary across subject matters and at various stages of its work, the Subcommittee would welcome the views of Committee Members and Observers at the Twenty-fourth Session on modes of engagement.

Issues

6. The Subcommittee recognized that the issue of taxation of the digitalized and globalized economy is a complex area where there are various options for consideration by countries, whether developing or developed. On the one hand there is a frequent call to update outdated rules to better recognize the role of markets in profit-making by corporations under modern business conditions, while on the other there was a need to look for options that received as much international support as possible to avoid a multiplicity of rules and the possibility of double taxation.

7. The Subcommittee also recognized that in addressing these issues, countries were considering the pros and cons of options at various levels, including at the level of multilateral conventions, unilateral legislation, and bilateral measures such as the new Article 12B of the UN Model Tax Convention (which itself requires underpinning domestic legislation to operate effectively). Each of these options has pros and cons in terms of aspects such as feasibility of success, simplicity and administrability, impact on investment climate, international consistency and the balance of interests

of market countries as compared with countries of residence of corporations. The pros and cons (and their perceived weighting) might also differ between countries in view of their situations and policies on taxation for development.

8. With this background, the Subcommittee did not see its mandate as calling for it to recommend specific actions in this area, but rather to consider options in the area that might not be provided for elsewhere and that may attract countries not pursuing other options, for whatever reasons. In particular a large majority of the Subcommittee saw a distinct “value add” in examining prospects for further “multilateralizing” approaches grounded in the provisions of the UN Model Tax Convention and its objectives, notably the new Article 12B on automated digital services.

9. Consequently, the Subcommittee considered that its mandate should be addressed by the following workstreams at this stage:

Workstream A – More multilateralized forms of implementing aspects of the UN Model Tax Convention relevant to taxing the digitalized and globalized economy

10. This workstream will explore options for affording countries that were not planning, for whatever reason, to follow such other multilateral approach(es) to taxing the digital and globalized economy as may exist at a relevant time, and were interested in adopting Article 12B (Automated Digital Services) of the UN Model Tax Convention, an efficient way of implementing it in their treaty networks, such as through a form of multilateral instrument. It may also allow for implementing a limited number of optional provisions such as Article 12A of the UN Model on Fees for Technical Services, or a Subject to Tax Rule. There may also be additional options that arise in discussions as part of this workstream.

11. While recognizing that not all treaty partners may wish to have such a provision, or that countries may seek other options (including other multilateral options), and while acknowledging the different perspectives recognized in the Commentary to Article 12B, reflecting some differing views held on these issues more generally, this workstream adds value to existing Tax Committee work exemplified in Article 12B and its Commentary.

12. It is intended to commence this work by outlining options and key issues for facilitating adoption by interested countries of provisions designed to effectively tax the digitalized and globalized economy in the quickest time, and to initially report progress to the Committee at its Twenty-fifth Session.

13. This work does not inherently involve any need to propose changes to the Model, but the Subcommittee will keep in liaison with the Subcommittee on the UN Model Tax Convention between Developed and Developing Countries. The cross-participation between the two Subcommittees should assist in this liaison and any necessary coordinated work in future. At a later stage some transmission of issues to that Subcommittee may be needed, as directed by the Committee.

Workstream B – Consideration of the function and relevance or otherwise of physical presence tests (such as under “permanent establishment” rules) in the context of an increasingly digitalized and globalized economy.

14. The Subcommittee considers that an open consideration of physical presence-based tests to trigger taxing rights in source countries and its continued relevance or otherwise in an increasingly digitalized and globalized economy would be a valuable contribution well adapted to the Committee’s diverse character and broad network of observers.

15. While the Subcommittee does not consider that this work should hold up Workstream A above (with the work being done in parallel) it does feel that a first level consideration of the purpose of the permanent establishment rule’s focus on physical presence, its operation in the digitalized and globalized world and the relevance or otherwise of options for moving away from it in certain circumstances, as has already happened in Articles 12A and 12B, might be important for the work of the Committee (and perhaps others) in this area. This will also help longer-term consideration of the issues at stake and the best options to address them.

16. If at any stage, the subcommittee feels that it needs to propose changes to the Model Convention, it will liaise with the Subcommittee on the UN Model Tax Convention between Developed and Developing Countries, in view of the relevant expertise in that group. The strong cross-participation between the two Subcommittees should assist in this liaison and any necessary work together.

17. As well as the two workstreams, the Subcommittee Members look forward to the opportunity to provide comments that will assist UN DESA in its capacity building in this area, which we understand will be designed to help developing countries analyze available options in this area and their practical pros and cons and reach their own considered views on the best options for them and how to take forward those options in practice.

Relationship to the Sustainable Development Goals

18. As noted in the [Report of the Committee's Twenty-third Session](#), held in October 2021, the Committee agreed:

- (a) To continue to discuss taxation and the Sustainable Development Goals regularly during sessions, as a permanent agenda item;
- (b) To request the secretariat to provide regular updates on taxation and the Sustainable Development Goals, at each session:
 - (i) To preserve the focus of the Committee's work in the area;
 - (ii) To identify any gaps in guidance;
 - (iii) To establish priorities for technical work to be carried out by the secretariat; and
- (c) To have subcommittees reflect on the link between their work and the Goals.

19. In addressing paragraph (c) of that conclusion, the Subcommittee recognizes that by promoting fair and effective tax systems, which support both revenue and trade and investment for development, through guidance products and through advising UN DESA on capacity building activities, the Committee's work contributes to achieving the interlinked SDGs as a totality.

20. More specifically in relation to the work of the Subcommittee, an effective guidance effort in this area will promote the balance of revenue needs and the development focused investment climate which many countries seek, by promoting whole of government, informed and practical real-world approaches to the issues involved. This builds greater certainty for all stakeholders in tax systems.

21. While contributing to achieving all the interlinked SDGs, this will particularly contribute to SDG 16 (Peace, Justice and Strong Institutions) in terms of helping develop effective, accountable and transparent institutions at all levels and SDG 17 (Global Partnerships for the Goals), in terms of strengthening domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

Next Steps.

22. The Subcommittee intends to commence work on Workstreams A and B in parallel after this Twenty-fourth Session of the Committee. Workstream A will consider options for a more multilateralized form of implementing aspects of the UN Model Tax Convention relevant to taxing the digitalized and globalized economy. Workstream B will consider the function and relevance or otherwise of physical presence tests in the context of an increasingly digitalized and globalized economy. Both workstreams will develop options for consideration by the Committee designed to assist developing countries in this area. The Subcommittee seeks Committee views on these issues.

23. The Subcommittee proposes to take into account the comments made at the Twenty-fourth Session and to report back on the progress at the Twenty-fifth Session.

24. The Subcommittee seeks *the Committee's views on the issues raised in this note.*