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

Virtual informal meetings of 20-29 October 2020

Item 3 (b) of the provisional agenda

**Update of the UN Model Double Taxation Convention between Developed and
Developing Countries – Minority view on a definition of “beneficial ownership”**

**Note by the Subcommittee on the UN Model Tax Convention between Developed and
Developing Countries**

Summary

Note [E/C.18/2020/CRP.6](#) on the meaning of beneficial owner was approved at the 20th session of the Committee. At the end of the discussion on this topic, a few members asked for the inclusion, in the UN Model Double Taxation Convention between Developed and Developing Countries (UN Model), of a minority view concerning the addition of a definition of beneficial owner. It was decided that such a minority view would be drafted for consideration by the Subcommittee and the Committee.

At its online meeting of 30 August to 2 September 2020, the Subcommittee discussed the draft proposed by one of these members and agreed on the wording of the minority view included in this note.

At its twenty-first session, the Committee is invited to discuss this proposed minority view in light of the decisions concerning minority views that it may reach under item 3(a) of its agenda and to approve the inclusion of the minority view in the UN Model.

1. At its nineteenth session (Geneva, 15-18 October 2019), the Committee discussed note [E/C.18/2019/CRP.21](#) which included proposals from the Subcommittee on the UN Model Tax Convention between Developed and Developing Countries for the clarification of the concept of beneficial owner used in Articles 10, 11, 12 and 12A of the UN Model. During the discussion, one member suggested to include a definition of beneficial owner in the articles of the UN Model and it was decided that the Subcommittee would examine that suggestion at its next meeting. At its February 2020 meeting and May 2020 online meeting, the Subcommittee concluded that the suggestion should not be followed.

2. At its twentieth session (online meeting held on 22-26 June 2020), the Committee discussed and approved note [E/C.18/2020/CRP.6](#), which included a revised version of the Subcommittee's proposals for the clarification of the concept of beneficial owner used in Articles 10, 11, 12 and 12A of the UN Model as well as the Subcommittee's recommendation that a definition of beneficial owner should not be included in the UN Model. At the end of the discussion on this topic, a few members asked for the inclusion, in the UN Model, of a minority view concerning the addition of a definition of beneficial owner. It was decided that such a minority view would be drafted for consideration by the Subcommittee and the Committee.

3. At its online meeting of 31 August to 2 September 2020, the Subcommittee discussed proposed alternatives for such a minority view drafted by one of these members and, after discussion, agreed on the following wording, which would be included in the Commentary on Article 3 (General definitions) of the UN Model:

Add the following new paragraph immediately after existing paragraph 3 of the Commentary on Article 3 (General definitions) of the UN Model:

[Three Members of the Committee] [that wording may need to be amended in light of the number of members who support that view and of any decisions concerning minority views that may be reached by the Committee under item 3(a) of its agenda] were of the view that it would be better, in the course of bilateral negotiations, to include a definition of the term "beneficial owner" for the purpose of Articles 10, 11, 12 and 12A in Article 3 of the UN Model Tax Convention, besides the explanation in Commentary. These Members pointed towards courts deciding differently in countries on whether the term should take its meaning from the domestic law of the Contracting State concerned or should be given an international fiscal meaning. Such definition gets elaborated in the Commentary on Articles 10, 11, 12 and 12A.

4. At its twenty-first session, the Committee is invited to discuss this proposed minority view in light of the decisions concerning minority views that it may reach under item 3(a) of its agenda and to approve the inclusion of the minority view in the UN Model.