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Committee of Experts on International Cooperation in Tax Matters

Report on the eleventh session (19-23 October 2015)

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Note

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[29 December 2015]

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2015/214, the eleventh session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 19 to 23 October 2015.

2. The eleventh session of the Committee was attended by 24 Committee members and 169 observers. The following Committee members attended the session (with the nominating country in parentheses, although the members serve in their personal capacity): Noor Azian Abdul Hamid (Malaysia); Mohammed Amine Baina (Morocco); Bernadette May Evelyn Butler (Bahamas); Andrew Dawson (United Kingdom of Great Britain and Northern Ireland); Johan Cornelius de la Rey (South Africa); El Hadji Ibrahima Diop (Senegal); Kim Jacinto-Henares (Philippines); Liselott Kana (Chile); Toshiyuki Kemmochi (Japan); Cezary Krysiak (Poland); Armando Lara Yaffar (Mexico); Wolfgang Lasars (Germany); Henry John Louie (United States of America); Enrico Martino (Italy); Eric Nii Yarboi Mensah (Ghana); Ignatius Kawaza Mvula (Zambia); Carmel Peters (New Zealand); Jorge Antonio Deher Rachid (Brazil); Pragya S. Saksena (India); Christoph Schelling (Switzerland); Stig Sollund (Norway); Xiaoyue Wang (China); Ingela Willfors (Sweden); and Ulvi Yusifov (Azerbaijan).

3. The session was attended by observers for: Angola, Argentina, Austria, Belgium, Brazil, China, Germany, Kuwait, Luxembourg, Malaysia, Mexico, Netherlands, Norway, Philippines, Russian Federation, Saudi Arabia, Singapore, Slovakia, South Africa, Spain, Switzerland, Trinidad and Tobago and Turkey.

4. Observers from the following intergovernmental organizations were also present: European Commission, International Monetary Fund, Organization for Economic Cooperation and Development (OECD) and United Nations Conference on Trade and Development. Other observers represented civil society, businesses or participated in their personal capacity.

5. The provisional agenda and documentation for the eleventh session as considered by the Committee (E/C.18/2015/1) was as follows:

1. Opening of the session by the Chairperson of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   (a) Issues related to the updating of the United Nations Model Tax Convention:
      (i) Article 1 (Persons covered): application of treaty rules to hybrid entities;
      (ii) Article 5 (Permanent establishment): the meaning of “connected projects”;
      (iii) Article 8 (Shipping, inland waterways transport and air transport):

a. The meaning and coverage of the term "auxiliary activities";

b. The application of the article to cruise shipping;

c. Other commentary issues;

(iv) Base erosion and profit shifting;

(v) Article 12 (Royalties):

a. The meaning of "industrial, commercial and scientific equipment";

b. Software-related payments issues;

(vi) Article 26 (Exchange of information): proposed code of conduct;

(vii) Taxation of services:

a. Article on technical services;

b. Other issues;

(b) Other issues:

(i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

(iii) Taxation of the extractive industries;

(iv) Taxation of development projects;

(v) Capacity-building;

(vi) Dispute settlement: arbitration issues for developing countries and possible ways forward;

(vii) International trade in goods — tax issues.

4. Dates and provisional agenda for the twelfth session of the Committee.

5. Adoption of the report of the Committee on its eleventh session.

Chapter II
Organization of the session

Opening of the session and adoption of the agenda

6. The eleventh session of the Committee was opened on 19 October 2015 by the Chair of the Committee, Armando Lara Yaffar. He then invited the Director of the Financing for Development Office of the Department of Economic and Social Affairs, Alexander Trepelkov, to speak on behalf of the Secretary-General of the United Nations.

7. Mr. Trepelkov briefed Committee members and observers on the major developments in the area of sustainable development and its financing that took place in July and September 2015. He noted that, at the United Nations summit for the adoption of the post-2015 development agenda, held in New York in September 2015, Member States adopted the 2030 Agenda for Sustainable Development, a universal and transformative vision for achieving a world free from poverty, hunger, disease and want, while protecting the environment.

8. The implementation of the 2030 Agenda would be supported by the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, which had been adopted by Member States in July 2015. The Addis Ababa Action Agenda as a new global framework for financing sustainable development by aligning all financing flows and policies with economic, social and environmental priorities.

9. Mr. Trepelkov noted that the mobilization of domestic resources was central to sustainable development and that the growing recognition of the importance of taxation as a means of such mobilization towards achieving sustainable development was underscored by the Addis Ababa Action Agenda. He drew attention to the commitments therein made by Member States with regard to several areas of tax policy aimed at raising domestic resources and fighting tax avoidance and evasion and illicit financial flows. Country efforts would focus on key areas, including tax administration, policy and incentives, as well as on increasing capacity-building and strengthening international cooperation on tax issues. Member States and the international community committed to assisting developing countries in those areas.

10. Mr. Trepelkov also pointed out that, with a view to strengthening the Committee, Member States had decided to increase the engagement of the Committee with the Economic and Social Council through its special meeting on international cooperation in tax matters. Moreover, beginning in 2016, the Committee would meet twice a year. Mr. Trepelkov informed the Committee that its future membership would be appointed by the Secretary-General in consultation with Member States.

11. The Chair then put forward the provisional agenda, contained in document E/C.18/2015/1, to the Committee, and it was adopted, except that, in view of a full agenda and no current developments to report, item 3 (b) (iv) on taxation of development projects would not be considered at the eleventh session and would instead be carried over until the twelfth session.

12. The following summary reflects discussions on all agenda items, not necessarily in the order of discussion.

Chapter III
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Article 1 (Persons covered): application of treaty rules to hybrid entities

13. At the ninth session, Mr. Louie reported on the application of tax treaties to payments through so-called “hybrid entities” (entities characterized differently by treaty partners as to their transparency or opacity for tax purposes). Subsequently, he prepared a conference room paper,[1] in which he proposed certain modifications to article 1 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. Following a discussion of the issue at the tenth session, Mr. Louie was asked to prepare an updated paper on the issue, taking into account the feedback and comments received, for consideration at the eleventh session (see E/C.18/2015/3).

14. In presenting the above-mentioned paper, Mr. Louie noted that the question raised therein was how a bilateral tax treaty functions in the case of a payment executed through an entity that is viewed differently by the two contracting States to the treaty. In that case, the State from which a payment is initiated (the source country) may view the receiving entity as a fiscally opaque entity, meaning that it considers that taxation should occur at the level of that entity, not at the level of those who participate in it. The contracting State in which the receiving entity resides may, however, view it as fiscally transparent, meaning that the income received is taxed not at the level of the entity, but at the level of the partners or the owners of the entity, even without a distribution.

15. In that context, Mr. Louie presented the following unintended consequences that might arise when applying a tax treaty to such a payment: (a) double taxation resulting from the denial of treaty benefits; (b) non-taxation resulting from the unintended granting of treaty benefits, such as to a resident of a third State; or (c) the granting of treaty benefits at an inappropriate level.

16. In the provision proposed for inclusion in the United Nations Model Convention, the treaty benefits would apply to the shareholders in the third State only if a mechanism of exchanging information were in place between the source State and the third State. Such a mechanism ensures that the source State could request information regarding the owners of the entity so as to ensure that they are given the appropriate treaty benefits.

17. Several participants expressed concern regarding the application of the treaty to the third State. One observer noted that if the proposition applies to a third country, there is the possibility that two income treaties would apply. If the third State views the entity as opaque, then the third State entity should be able to claim the treaty benefit. At the same time, if the shareholders view the entity as fiscally transparent, then they should be able to claim the treaty benefit on the shared income. In this regard, the observer expressed the view that the exchange of information was not enough to address the issue of the conflict of qualification.

[1] Documentation for the eleventh session is available on the Committee website http://www.un.org/esa/ffd/events/event/eleventh-session-tax.html.

18. One member of the Committee noted that the treaty benefit should be limited to the fiscally transparent entity and participants in that entity residing in the same country. The member did not think the treaty should apply in relation to a third State. An example was given of new legislation in a country, where a business trust was deemed transparent if its unit shareholders were from different countries. In such a case, it was not clear how the provision would apply to multiple owners in multiple countries. Moreover, the same member indicated that the proposed approach should only be applicable if provided for in the relevant treaty.

19. Mr. Louie explained that if a country with such legislation, in the case given, viewed the business trust as fiscally transparent, then the source country would apply the treaty to the level of shareholders, after applying the criterion of beneficial ownership. In the event that one of the shareholders was a resident of a third country with no tax treaty with the source country, then there would be no tax treaty benefit on the portion of the income allocated to the resident of the third State. In the case of a treaty between the source State and the third State, the application of that treaty would depend on how the third State viewed the entity in the resident State. If it viewed the business trust as a company, then the shareholder resident of the third State was not taking the source income into account and there was therefore no need to apply the treaty. However, if the third State viewed the business trust as fiscally transparent, which meant that it would take into account the source country income on a current basis when taxing, then the benefits of the tax treaty between the third State and the source country would be granted.

20. Mr. Louie agreed that that aspect should be mentioned in the treaty to ensure its application.

21. On the issue of applying the treaty benefits to the shareholders in the third State, even when there is no treaty between the third State and the source country, views were mixed. Some observers were of the view that if all three States viewed the entity in the resident State as fiscally transparent, the shareholder residing in the third State should be able to claim the treaty benefits as a natural consequence of that approach. Members took the view that, since there was no treaty between the third State and the source State, there was no treaty to be applied.

22. Some Committee members expressed the view that, given that the Model Convention primarily aimed at helping tax officials in developing countries, going to such a level of detail in respect of countries other than the contracting States to a treaty might cause confusion rather than be helpful.

23. In that regard, Mr. Louie responded that the purpose of the clarification was to give greater guidance to developing countries, both to ensure that the benefit under the treaty is provided when the investor is taxed and that benefits are not given when the investor is not taxed in the third State.

24. Another potential issue could arise when the entity in the State is not viewed as transparent by the source country and, in fact, is opaque and pays tax in the third State. In this case, the source State may be required to give up its taxing rights in order to avoid the double taxation scenario created by the classification by the resident State. Some country observers thought that there was a need to look at the issue closely and perhaps require the resident State to solve that issue instead of "exporting" it to the source country. On that point, Mr. Louie indicated that, in any

event, the source country would be expected to give treaty benefits only once, not twice, on the same income.

25. In cases in which two treaties might apply, since a State party to two treaties was expected to respect them both, it was clarified that the response would be to apply the treaty with the lower withholding tax so as to satisfy both treaties.

26. In conclusion, and in the light of the discussions, Mr. Louie offered to revise the proposed wording of the commentary on article 1, before the next meeting. In the revision, the following key points will be addressed:

(a) In cases in which two treaties may apply, the new language will clarify that the provision respects both treaties and the need to comply with them both. This means, in effect, applying the treaty with the lower withholding tax rate;

(b) The source country will give relief to the income taxed by the other contracting State and not to all income. This will avoid cases of double non-taxation;

(c) Provision should be made for the competent authorities to agree on how the rule should work in practice;

(d) The new language will clarify that the source country will provide relief once (and once only) in relation to the same income.

27. The Committee agreed to this and thanked Mr. Louie for his work on this issue and his presentation.

B. Article 5 (Permanent establishment): the meaning of "connected projects"

28. Viktoria Wöhrer, who assisted on this issue during her time as an intern with the Secretariat, presented a paper on the meaning of the phrase "the same or a connected project", as used in article 5 (3) (b) of the Model Convention. The paper was an updated version of papers presented at the ninth and tenth sessions of the Committee.

29. At previous sessions, the Committee had agreed that physical presence was required to support taxation under article 5 (3) (b) of the Model Convention. The Committee discussed the proposals contained in the above-mentioned paper and, after making further changes to them, agreed to include in the commentary on article 5 (3) a new paragraph (paragraph 12.1) providing that the traditional interpretation of subparagraph (b) would require the physical presence in the source State of individuals, being an employee or personnel of the enterprise furnishing services, in order for a permanent establishment to exist in that State, while recognizing that some Committee members disagreed. The commentary would provide as follows to recognize the view of those members:

> A minority view was that the requirement of physical presence is no longer relevant for article 5 (3) (b), as the business cycle may be completed without that physical presence. While some of those concerns may be addressed by adopting the article on fees for technical services, such an article does not cover all services covered under article 5 (3) (b).

30. The Committee decided to also include a new paragraph 12.2 clarifying that only the profits attributable to the services performed within the source State could be taxable in that State.

31. In addition, at its tenth session, the Committee had requested that revisions be made to the proposed commentary on article 5 (3), and include some examples to clarify that reference should be made to the perspectives of both the service provider and the customer when determining what constitutes "the same or a connected project". The Committee agreed to include such a clarification. With this explicit recognition of the significance of the perspective of the customer, the commentary would include some relevant factors for consideration, such as whether the projects are provided at the same location, whether they would usually be provided under a single contract, whether the services are provided consecutively, whether the projects resulted from the same bidding or negotiation process, whether each project is capable of separate delivery or acceptance and whether a reasonable person would not have entered into the contract as a separate project.

32. In the proposed paragraph 12.5 of the commentary, the reference to "associated companies" would be changed to "closely related companies" to distinguish it from the concept of "associated enterprises" contained in article 9. A definition corresponding to the one contained in action 7 of the OECD/Group of 20 Action Plan on Base Erosion and Profit Shifting would be used.

C. Article 8 (Shipping, inland waterways transport and air transport)

33. The Coordinator of the Subcommittee on Article 8: International Transportation Issues, Cezary Kyrsiak, reported on its work, which was to examine article 8 and its commentary and propose any necessary changes to the commentary. In line with its mandate, the Subcommittee's work mainly focused on the coverage of the concept of "auxiliary activities" and the issue of the application of article 8 to cruise shipping.

Coverage of the concept of "auxiliary activities"

34. Mr. Krysiak noted that despite using the same language in the article, "profits from the operation of ships or aircraft in international traffic", the commentaries to the Model Convention and the OECD Model Tax Convention on Income and on Capital describe the scope of the application of the article using different terms. They both describe the coverage of article 8 as including profits obtained by the enterprise from the carriage of passengers or cargo in international traffic. The difference, however, is that the Model Convention commentary includes, in its concept of what this entails, profits from "auxiliary" activities, whereas the OECD Model commentary includes profits from "ancillary" activities. The term used in the OECD Model was changed, at least in part, to differentiate the term from the term "preparatory or auxiliary" used in article 5 (4), as noted in the Secretariat paper presented at the tenth session of the Committee. The difference in the usages is owing to the quote in the Model Convention commentary having been taken from the pre-2005 version of the OECD Model commentary, before that change was made.

35. The Subcommittee met during the eleventh session of the Committee and, as reported by Mr. Krysiak, could not find a clear-cut difference between the "auxiliary

activities" in the Model Convention and the "ancillary activities" in the OECD Model. In view of this, and to avoid the possibility of confusion because of the different usages, when no clear difference in meaning was intended, the Subcommittee favoured adopting the term "ancillary". The Subcommittee found the OECD Model commentary on article 8 (paras. 4-14.1) to be clearer on the issue of ancillary activities and recommended that the Model Convention adopt the same text.

36. In the discussions that ensued, there was some disagreement among participants on the issue. Some supported the Subcommittee proposal, but others considered "ancillary" to be broader in operation than the term "auxiliary", to the extent that it could create a larger "carve-out" for profits from taxation under the normal principles of articles 5 and 7 and could lead to unjustified loss of revenue for States in which such profit-making activities occur.

37. Others pointed out the fact that, even among OECD countries, there were some reservations with regard to the application of the article. Some participants noted the confusing nature of the two terms "auxiliary activities" and "ancillary activities" and recommended a more detailed explanation of the meanings of the two terms, based on clear examples.

38. In conclusion, the Committee requested that the Subcommittee redraft the proposed commentary on article 8, emphasizing the various and clear examples with regard to when the article should be applicable and, as necessary, noting the concerns that were raised in the discussion.

Application of article 8 to cruise shipping activities

39. In order to determine if article 8 applied to cruise shipping, the Subcommittee examined the commentary on article 8 relating to its coverage. It noted that, as recorded in the 2014 Secretariat paper on the issue, article 8 applied to profits "from the carriage of passengers" in international traffic (para. 10 of the Model Convention commentary incorporated para. 4 of the pre-2005 OECD Model commentary). It then concluded that cruise shipping was included within the meaning of the term "international traffic" as a transport of passengers, as clarified in the OECD Model. Moreover, the Subcommittee recommended that the Model Convention commentary follow the updated OECD Model commentary on the definition of "international traffic" in article 3, by making specific mention of a cruise as an example of international transport.

40. The Committee accepted in principle the recommendations made by the Subcommittee on the inclusion of cruise shipping activities within the coverage of article 8 and requested it to propose updates to the commentary accordingly. A minority view, that cruise activities were not within the scope of article 8, would also be noted.

41. The Committee thanked the Subcommittee for its work.

D. Article 9 (Associated enterprises): issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

42. The Coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing, Mr. Sollund, presented a note detailing the recent work of the Subcommittee and the proposed way forward. He reminded the Committee of the mandate of the Subcommittee and specified that the first part of its mandate, to update the commentary on article 9, had been completed, and the updated commentary adopted, at the previous session for inclusion in the next update of the Model Convention. Since that time, the Subcommittee had been working on the second part of its mandate, to propose an updated version of the United Nations Practical Manual on Transfer Pricing for Developing Countries for adoption by the Committee, in particular proposing new chapters on intra-group services and intangibles and guidance on cost contribution arrangements and business restructuring.

43. Mr. Sollund emphasized that the mandate of the Subcommittee specified that the outcome of the OECD/Group of 20 Action Plan on Base Erosion and Profit Shifting project should be taken into account and stressed that updates to the Manual on Transfer Pricing will, as far as possible, be consistent with consensus decisions under the Action Plan project. He indicated that an updated Manual would be presented to the Committee at its twelfth session, to be held in October 2016.

44. Mr. Sollund noted that there was much interest in the work of the Subcommittee, which assembled a broad range of members acting in their personal capacity. Two new members were welcomed to the Subcommittee: Melinda Brown (OECD) and Ruslan Radzhabov (Federal Tax Service, Russian Federation). Given the current membership of the Subcommittee, he noted that it was at its maximum size.

45. Since the previous session of the Committee, the Subcommittee had met once in New York. During that meeting, most of the discussion focused on the new chapter on intra-group services. Mr. Sollund noted that a draft of the chapter had been posted on the Committee website, on the page for its eleventh session, for transparency.

46. The chapter covers two main elements, how to first determine whether a service has been rendered and then to address how such a service should be remunerated. The guidance provided takes into account the perspective of the business, the country where the service is furnished and the country in which the business rendering the service is located. Allocation keys, indirect charges and safe harbours are also discussed. Mr. Sollund expressly thanked the lead drafter of the chapter, Michael Kobetsky, for his work.

47. In future, the Subcommittee will focus on their work on intangibles, documentation and business restructuring. The lead drafter for the work on intangibles and business restructuring is Giammarco Cottani. The revisions of the chapter on documentation will be undertaken by Joe Andrus. Mr. Sollund stressed that changes to the documentation chapter would be consistent with the outcome of the OECD/Group of 20 Action Plan project.

48. Mr. Sollund suggested that the next version of the Manual on Transfer Pricing should be reorganized into three parts. The first part should include substantive issues as they relate to transfer pricing. In the second part, the Manual should contain guidance on administrative issues. The third part of the Manual should contain country practices, and the positions of other countries would be welcomed. This new structure would make editing of the Manual easier, according to Mr. Sollund. The new structure was welcomed by the Committee.

49. The next meeting of the Subcommittee was scheduled to take place in Santiago from 16 to 18 November 2015. The drafts of new and updated guidance would be published on the Committee website soon thereafter. Mr. Sollund noted that another meeting of the Subcommittee would likely take place in April 2016 and, if needed, an additional meeting could be scheduled.

50. During the discussion, one member of the Committee noted that transfer pricing issues relating to intangibles were severely undermining the ability of developing countries, such as the member's country, to collect taxes and that those issues needed further study. It was stressed that the Subcommittee should critically analyse the outcomes of the OECD/Group of 20 Action Plan project before incorporating them into the Manual on Transfer Pricing. The member indicated that the high turnover threshold of 750 million euros for country-by-country reporting may be too high, especially for the interests of developing countries. Mr. Sollund explained that it would be difficult for the Manual to prescribe a lower threshold, given the need for consistent domestic legislation on this issue. He noted that this issue would be reviewed by the OECD in 2020.

51. The Coordinator of the Subcommittee and participants agreed that it would be of the utmost importance to translate the Manual on Transfer Pricing into the other official languages as soon as possible in order to reach a wider audience and provide effective guidance.

52. The Committee thanked the Subcommittee for its work.

E. Article 12 (Royalties): the meaning of "industrial, commercial and scientific equipment"; and issues regarding software-related payments

53. At its tenth session, in 2014, the Committee asked the Secretariat to prepare a note with proposed text aimed at clarifying the meaning of the term "industrial, commercial or scientific equipment" in the commentary on article 12 and to address the issue of coverage or otherwise of software-related payments under this article. A paper on broader issues was presented by its author, Scott Wilkie. Another paper was prepared by the Secretariat and presented by Michael Lennard and Anna Binder, who worked on the issue during her time as an intern with the Secretariat.

54. In his presentation, Mr. Wilkie noted that it was important to consider whether article 12 of the Model Convention was meant to have a residence or source State orientation, in other words, whether it is intended to operate within the typical parameters of articles 5 and 7 or, effectively, to extend the scope of the articles as either: (a) a proxy for taxing business profits regardless of whether a permanent establishment exists or (b) a proxy for a (constructive) permanent establishment to

which business profits (royalties for the use of business property) would naturally be associated.

55. In Mr. Wilkie's view, the question relevant to a broader consideration of article 12 was whether business profits earned by a non-resident by making its business property (other than financial property) available for use by or at the direction of another in the source State should be treated as equivalent to the property owner carrying on its business and earning profits "through" the medium of the property and vicariously its use. Some possible options for consideration by the Committee were to limit the scope of article 12 to profit participation or to explicitly note, possibly by means of a clarification in the commentary, that article 12 preserves tax rights for a modified "net basis" measure of income.

56. Mr. Lennard and Ms. Binder then addressed some specific issues related to industrial, commercial and scientific equipment and software-related payments. With regard to industrial, commercial and scientific equipment, it was noted that reference to such equipment was retained in the Model Convention, notwithstanding its removal from the OECD Model many years ago. There nevertheless remained little guidance on the meaning of the term in the Model Convention commentary. Some possible clarifications were presented, relating to the definition of the term; the difference, in this context, between a lease and a sale of equipment; the treatment of transmission capacity; and the relationship between articles 12 and 8.

57. As to the issue of software-related payments, it was noted that whereas the OECD Model commentary paragraphs addressing this issue were incorporated into the Model Convention in paragraph 12 of its commentary, the commentary also briefly, and in little detail, recorded the disagreement of some Committee members with the OECD view that payments mentioned in some of the OECD paragraphs were *not* royalties. It was agreed that there was some uncertainty in guidance on these issues, with which a better articulation might assist.

58. The Committee thanked the presenters for their contributions and presentations. In view of the issues raised for consideration at the present and previous sessions, a Subcommittee on Article 12 (Royalties) was formed, to be coordinated by Ms. Saksena, with the following mandate:

Subcommittee on Article 12 (Royalties)

The Subcommittee is to consider and report on possible improvements to the commentary on article 12 (Royalties) of the Nations Model Convention and, if required, the text of that article. It is mandated to initially report to the Committee at its twelfth session, in 2016, addressing as its initial priority such improvements to the commentary on industrial, commercial and scientific equipment and software-related payments as are most likely to be accepted by the Committee for inclusion in the next version of the Model Convention.

F. Article 26 (Exchange of information): proposed code of conduct

59. The discussions on exchange of information were introduced by Mr. Lara, in his capacity as Coordinator of the Subcommittee on Exchange of Information. He introduced a document on a proposed revision of the United Nations Code of Conduct on Cooperation in Combatting International Tax Evasion and Avoidance.

He explained that, at its fifth session, the Committee had adopted a proposed code for consideration by the Economic and Social Council. At that time, the Council acknowledged the code but did not take additional action. Given recent developments, the Subcommittee considered that there was an opportunity to update the code to incorporate recent developments and to make a united statement in support of automatic exchange of information. A proposal had been put forward for discussion at the tenth session, in 2014, and the current version took into account points raised at that time and since then.

60. Mr. Lara recalled the work done in this area by the OECD/Group of 20 Action Plan project, in which a growing number of countries had committed to automatic exchange of information with the aim of curbing tax avoidance and tax evasion. He asked the Committee to discuss the proper procedure for the Economic and Social Council, and by extension the United Nations, to make a clear statement in support of automatic exchange of information among countries. After discussion of the procedure, and only if such a text is deemed necessary, the Committee would discuss its content.

61. The Committee and other participants agreed that there was a need for such a statement from the Economic and Social Council, given that it would make it clear that the United Nations, as a global body, supported automatic exchange of information to combat tax avoidance and tax evasion. Some participants recommended, however, that the language of the text be revised to produce a text that was not made to appear legally binding for countries, given that this would unnecessarily hinder the wide support for such a document.

62. After further discussion, and with the input of the Secretariat as to the appropriate format to be presented to the Economic and Social Council, the Committee agreed in principle that the Code should take the form of a Council resolution, with a draft to be included in the report of the Committee, in the section on action required by the Economic and Social Council. The Committee recommended that the Subcommittee redraft the text for the next meeting of the Committee. The Secretariat was requested to make initial suggestions with regard to the format and wording of the text.

G. Taxation of technical services

63. During the ninth session, in 2013, the Committee confirmed its decision to introduce a new article dealing with taxation of technical services. The drafting of the article and its commentary was part of the broader mandate of the Subcommittee on the Tax Treatment of Services. This item was presented by the Coordinator of the Subcommittee, Liselott Kana, and a consultant, Brian Arnold.

64. Presenting his paper on a proposed new article on fees for technical services and its commentary, Mr. Arnold noted that the paper sought to draw upon comments made at the tenth session of the Committee, discussions at a meeting of the Subcommittee held in April in New York and comments made on a draft article circulated to the Subcommittee after that meeting.

65. Mr. Arnold noted that the main changes made to the text since the past session as a result of the discussions and comments were the following:

- The reference to “payments” had been changed to “fees”

- A reference to the concept of “beneficial owner” had been added
- The reference to reimbursement of expenses was deleted from the definition of “fees for technical services”
- New exclusions from the definition of “fees for technical services” had been added
- Article XX(7), which dealt with excessive fees because of a special relationship, had been added

66. Some changes had also been made to the draft commentary, including initial drafting to reflect the minority position on the article, which, as agreed at the tenth session, would be reflected in the commentary. Those taking the minority position had taken the lead in such drafting.

67. Discussions mainly focused on the text of the article itself and the expression of the minority position in the commentary. There was initially some discussion of the relationship with other articles in the Model Convention, in terms of priority or otherwise. As a result, it was decided that paragraph 2 of the new article did not need to address its relationship with article 20 since there was no overlap between the two articles in practice. It was decided that it should be made clear in the wording that article 17 should be given priority over the new article.

68. There was considerable discussion on the proposed “carve-out” from the operation of the article for “teaching in or by educational institutions as part of a degree-granting programme”. The reference to a degree-granting programme was removed in order to accommodate the different approaches that countries may take and to broaden the scope of the exclusion in the article. A number of members expressed a preference for removing the exclusion, because of issues that might arise concerning the definition of teaching and the possibility of abuse. It was agreed that removal of the carve-out would be addressed as an option in the commentary.

69. In relation to the proposed carve-out for certain payments to directors or top-level managerial officials of a company, as provided for in proposed paragraph 3 (b), it was agreed to make the new article subject to article 16.

70. It was decided not to include in the text of the article a proposed carve-out for services “that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property” but to address that as a possible option in the commentary instead.

71. There was some discussion on how to present the minority view on the article in a way that respected the divergent views of both the majority and the minority, recognizing the majority view in favour of such a provision — and accompanying guidance — for countries wishing to use it in their treaty negotiations, and in a manner that reflected the role of the Model Convention in assisting developing country treaty policy and practice, while preserving a fair balance between how the views are reflected in the commentary. The wording of the article and the minority view for the commentary on the new article were discussed in detail and agreed upon by the Committee. Committee members were invited to raise issues not yet discussed with the Subcommittee regarding the wording of the draft commentary.

72. It was also agreed that a minority approach of addressing the issue of fees for technical services by adding proposed wording to article 12 (Royalties), as an alternative, would be addressed in relevant commentaries. It was further decided that the Subcommittee should draft, for possible inclusion in the commentary, an alternative, originally proposed as a possible compromise solution in the Subcommittee, which avoided reference to specific types of services and instead addressed taxation by a State of all services performed in that State, as well as services performed outside that State by related parties. In this context, it was noted that the relationship with article 5 (3) (b) would need to be considered.

73. The Committee and Mr. Arnold were thanked for their work.

H. Base erosion and profit shifting (various articles)

74. The Coordinator of the Subcommittee on Base Erosion and Profit Shifting for Developing Countries, Carmel Peters, provided an update on the work of that Subcommittee. She reported that in the first phase of the Subcommittee's work, its primary function was to facilitate a dialogue with officials in developing countries with a view to ensuring that their views were fed into the Group of 20/OECD Action Plan project and the ongoing work of the Committee. In the fulfilment of this mandate, the Subcommittee circulated a paper on the project, including a questionnaire requesting developing countries' views on how they prioritize the issues related to the project and seeking information on other base erosion concerns. The responses were summarized and presented at the tenth session of the Committee. An updated summary, including several responses received after the tenth session, was published by the International Bureau of Fiscal Documentation and made available for the current session of the Committee. Ms. Peters gave a brief overview of the summary of the responses to the questionnaire.

75. The mandate of the Subcommittee was expanded during the tenth session of the Committee, requiring it, inter alia, to report to the Committee on proposed updates to the Model Convention relating to matters addressed as part of the Action Plan, with a particular emphasis on the next update. In that connection, Ms. Peters proposed to focus on the OECD work undertaken in the context of its Action Plan, which would be useful for the next update of the Model Convention, including measures included in the reports on actions 2, 6, 7 and 15. More specifically, she suggested that the Subcommittee report to the Committee on whether proposals in the reports on actions 6 and 7 should be adopted for the next update of the Model Convention and, if so, how to prioritize them. Alternative proposals could also be considered. The Subcommittee should also report to the Committee on the OECD work on the development of the multilateral instrument. The Subcommittee might also consider whether there were other changes to the treaty that should be considered to address base erosion and profit shifting issues. These proposals by Ms. Peters for the Subcommittee's workplan were agreed by the Committee as being within its mandate.

76. Mr. Trepelkov launched the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, which was published as a result of a recent collaborative project undertaken by the Financing for Development Office, with a view to complementing the OECD work on base erosion and profit shifting issues from a capacity development perspective for the benefit of developing countries.

The Handbook is aimed at assisting developing countries in (a) engagement and effective participation in relevant international norm-setting and decision-making processes, including in the OECD forums; (b) the assessment of the relevance and viability of potential options for protecting and broadening their tax bases, including those proposed in the context of the OECD Action Plan; and (c) the effective and sustained implementation of the most suitable and beneficial options.

77. Subsequently, the two main authors of the content of the Handbook, Brian Arnold and Hugh Ault, provided an overview of the material included in the 10 chapters of the Handbook.

78. Ms. Jacinto-Henares presented the perspective of the Philippines on base erosion and profit shifting issues. She was of the view that such issues constitute a long-standing problem from the point of view of developing countries, and the recent attention to these issues by developed countries would benefit all. She emphasized that an inclusive approach that took into account developing countries' perspective was needed in order to arrive at an acceptable solution, given the role of developing countries in the global economy. She expressed the view that the OECD work on base erosion and profit shifting did not put developing countries on equal footing with developed countries, since the former were able to participate but were not part of the consensus and, as a result, the agreed norms did not sufficiently reflect their inputs. She also pointed out the limitations of the OECD multilateral instrument, which was being designed to deal only with selected issues under several actions. In this regard, she emphasized the important role of the United Nations and the Model Convention in particular, which reflects the views of developing countries. She also suggested that the United Nations organize a conference to help clarify the positions of developing countries on issues related to base erosion and profit shifting.

79. During the ensuing discussion, it was acknowledged that developing countries faced specific issues that required specific solutions. In this regard, many welcomed with appreciation the publication of the Handbook. The importance of action 5 on harmful tax competition for developing countries was mentioned, given that implementing the conclusions of the report on base erosion and profit shifting might have the unintended consequence of intensifying tax competition for real activities. A suggestion was also made to, over the longer term, complement the Action Plan project, which is concerned with fixing existing treaty rules, with the consideration of underlying issues such as the digitalization and dematerialization of the economy. That aim could be facilitated by a conference organized by the United Nations.

80. The Subcommittee was thanked by the Committee for its work.

I. Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

81. In accordance with the mandate of the Subcommittee on Negotiation of Tax Treaties — Practical Manual, the Coordinator of the Subcommittee, Wolfgang Lasars, presented a draft of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries for adoption by the Committee. He began by reviewing the mandate of the Subcommittee and reporting on its work, including the engagement of experts, Ariane Pickering and Ron van der Merwe, whose

work culminated in the production of the final draft. Mr. Lasars then presented the outline of the draft Manual and briefly described the content of each section.

82. The draft Manual was adopted by the Committee following minor revisions, including the updating of the references to the OECD Action Plan project in the footnotes. The draft was to then undergo the usual production process, including editing, translation into other official United Nations languages and printing. During the ensuing discussion, appreciation was expressed for the efficient work of the Subcommittee and for its success in keeping the Manual at a basic level in order to provide a useful tool for negotiators with little or no experience in the negotiation of treaties. Calls were also made for the dissemination of the new Manual to developing countries, including through an official launch and the direct transmission of copies to Governments and subregional organizations, including through organizing training activities utilizing the Manual.

83. Mr. Lasars and the Subcommittee were thanked for bringing a long-standing project to conclusion, and, with the Subcommittee's work completed, it was disbanded. It was recognized by the Committee that future members of the Committee would probably need to form such a subcommittee again to update the Manual.

J. Taxation of the extractive industries

84. The Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Eric Mensah, presented the work of the Subcommittee. Based on his progress report, he explained that the Subcommittee was submitting (a) an overview note on taxation issues in the extractive industries; (b) a guidance note on selected tax treaty issues in relation to the extractive industries; and (c) a guidance note on capital gains taxation and the taxation of indirect asset transfers, for approval. In addition, the Subcommittee was submitting a draft guidance note on the tax treatment of decommissioning for the extractive industries, for comments, and was seeking approval for its workplan on specific aspects.

85. Mr. Mensah mentioned that the Subcommittee had held two meetings since the most recent session of the Committee, namely, at United Nations Headquarters in New York and in Bratislava, hosted by the Ministry of Finance of Slovakia. He also updated the Committee on the membership of the Subcommittee, which is wide and varied and includes Committee members, observer countries, advisers and representatives of industry and non-governmental organizations.

86. In introducing the issue, Mr. Mensah reminded the Committee of the Subcommittee's mandate and stressed that the Subcommittee was conscious of the need to provide guidance on how to tax the extractive industries in a manner that strikes a fine balance between attracting investment and allowing Governments to collect revenue. He then introduced the first guidance note for approval, namely, the overview note on extractive industries taxation issues, which summarizes the relevant issues and brings together the various relevant guidance notes. The overview note was adopted by the Committee.

87. Tomas Balco presented the guidance note on selected tax treaty issues in relation to the extractive industries. The guidance note is aimed at giving a comprehensive overview of treaty issues related to extractive industries taxation, which would, for example, assist treaty negotiators who are not specialized in this

field but need to be aware of how a double taxation treaty could affect a country's ability to tax the extractive industries.

88. The guidance note was adopted after a revision to the text regarding the territorial scope of double taxation treaties, following discussion that revealed differing views on whether the non-inclusion of an area such as the continental shelf in the geographical coverage of the treaty was significant or not for taxing rights.

89. Michael Lennard presented the guidance note on capital gains taxation and the taxation of indirect asset transfers. The guidance note discusses whether capital gains should be taxed, and, if so, how this should be done. He then outlined the policy and administration issues concerning capital gains taxation in the extractive industries and the indirect transfer of assets. The guidance note was adopted by the Committee.

90. Olav Fjellså and Chris Sanger presented the draft guidance note on the tax treatment of decommissioning for the extractive industries, for comment. The aim of the guidance note is to provide Governments with insights to enable them to design their tax regime for decommissioning in such a way as to avoid undermining the effective decommissioning of facilities. The note gives an overview about the tax treatment of decommissioning and the principles involved. It also addresses the issue of the quantification of costs, tax policy issues and their application. The paper will be revised to include information on decommissioning in the mining sector, policy scenarios and dispute resolution. The revised paper is expected to be finalized in April 2016 and will be presented to the Committee for approval at the session to be held in October 2016.

91. Mr. Mensah then outlined the Subcommittee workplan for the following year. In addition to the above-mentioned guidance note on the tax treatment of decommissioning, the Subcommittee will work on producing guidance notes on: (a) value added tax in relation to the extractive industry; (b) the tax aspects of the negotiation and renegotiation of extractive industry contracts; (c) permanent establishment issues in the extractive industries; and (d) kinds of "government take". The Subcommittee will also undertake exploratory work on the effective review of invoicing and costs. The workplan of the Subcommittee was adopted by the Committee.

92. The Subcommittee is expected to meet again in March 2016 in Livingstone, Zambia. Mr. Mensah thanked the Ministry of Finance of Slovakia for hosting a meeting of the Subcommittee.

93. The very important contribution of Ilka Ritter, over a period of three years and with the support of the Government of Germany, to this and other work in the Secretariat, was recognized.

94. The Committee thanked the Subcommittee for its work in this matter and all the presenters, who had provided valuable insights.

K. Dispute resolution

95. The Secretariat introduced its paper on dispute resolution and avoidance. Juliane Gröper, who had worked on this issue as an intern, joined the secretariat for the presentation. In explaining the paper, the secretariat noted that it had been

mandated at the previous session to provide a balanced paper on arbitration issues for developing countries in the context of international tax disputes. The secretariat indicated that, as noted in the paper, its intention was not to promote or discourage arbitration but to analyse relevant issues and how they may be addressed.

96. The following points were highlighted in the presentation:

(a) Although data on the mutual agreement procedure is very limited, especially from developing countries, available data suggests that inventories of unresolved cases are increasing. This trend is widely expected to continue;

(b) As a response to this, many countries are proposing arbitration, within the mutual agreement procedure, to ensure the resolution of cases that have remained unresolved for many years;

(c) There is likely to be growing discussion of the arbitration issue in tax treaty negotiations, in particular owing to the recent commitment by 20 OECD members to include mandatory binding arbitration in their tax treaties, and countries must be in a position to understand and discuss the issues that arbitration raises, whatever the view they ultimately take on the question;

(d) The secretariat had found it impossible to do a proper consideration of arbitration issues for developing countries without also addressing non-binding means of dispute settlement such as conciliation and mediation, as well as other binding means such as expert determination;

(e) The paper examined some commonly expressed concerns such as the cost of "loss of sovereignty" and the issue of arbitrators' independence, in order to consider what the practical issues facing developing countries might be, and then went on to consider how those issues might be addressed, including through clauses in agreements to arbitrate, procedural provisions and institutional developments;

(f) Certainty for taxpayers was an important part of the consideration of dispute avoidance and resolution in tax matters, but also important were the issues of certainty for the revenue administration in terms of source taxation rights preserved in a treaty being upheld and certainty for the wider citizenry that multinational enterprises and others would pay the appropriate taxes;

(g) The United Nations and the Committee could play an important role in building understanding on the issue of dispute avoidance and resolution, and the paper recommended that a well-balanced multi-stakeholder subcommittee be set up to examine these issues further.

97. The paper was welcomed for providing in-depth treatment of an important issue. In the ensuing discussions, the following points were made:

(a) The lack of experience in this area is not just in arbitration, of which few Governments, developed or developing, have had practical experience, but in the mutual agreement procedure itself, and addressing the lack of experience and the improvement of the efficiency and effectiveness of the procedure should be an important part of future initiatives;

(b) Consideration should be given to the avoidance of disputes, including through advance pricing arrangements, and to the benefits of updating the chapter on dispute avoidance and resolution, which includes a part on advance pricing

arrangements in the Manual on Transfer Pricing, rather than by independent work, was also noted;

(c) Arbitration will only work where there are agreed norms, and until there was greater agreement on relevant norms, mandatory arbitration would be difficult to achieve. Other mechanisms such as safe harbour rules and advance rulings should also be considered;

(d) It should be made clear that, even where arbitration is provided for, it will be in the context of the mutual agreement procedure rather than as an alternative to it, and that it will always be the exception, not the rule, in settling disputes;

(e) The importance of the confidentiality of taxpayer information and its impact on dispute resolution and the protection of taxpayers' rights were noted;

(f) The work of other bodies such as OECD and the International Bureau of Fiscal Documentation in this area, the need to take into account that work and the importance of the United Nations giving guidance in this area were noted, as was the need to draw upon experience in other areas of dispute avoidance and resolution, such as within the World Trade Organization and investment and commercial arbitration;

(g) The paucity of statistics on the mutual agreement procedure, especially in the non-OECD context, was noted, as were the potential benefits of joint work between OECD and the United Nations on these issues.

98. A subcommittee was set up, to be coordinated by Ms. Jacinto-Henares with the mandate set out below.

Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution

99. The mandate of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution is to consider and report back to the Committee on dispute avoidance and resolution aspects relating to the mutual agreement procedure with a view to reviewing, reporting on and, as appropriate, considering possible text for the Model Convention and its commentaries, as well as related guidance, on issues such as:

- Options for ensuring that the mutual agreement procedure under article 25, in either of its alternatives in the Model Convention, functions as effectively and efficiently as possible
- Other possible options for improving or supplementing the mutual agreement procedure, including through the use of binding or non-binding forms of dispute resolution
- The exploration of issues associated with agreeing to arbitration clauses between developed and developing countries
- Means of dispute avoidance, such as advance pricing agreements, with recognition of the primary role of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing and the Manual on Transfer Pricing in addressing such agreements

- The possible need for updates or improvements to the guide to the mutual agreement procedure under tax treaties, approved by the Committee at its annual session held in 2012

100. The Subcommittee will focus in particular on issues for developing countries, possible means of addressing them in a practical manner and possibilities for improving guidance and building confidence for dealing with issues in this area. It is mandated to initially report to the Committee at its session in October 2016, addressing as its major priority improvements, if any, that are most likely to be accepted by the Committee for inclusion in the next version of the Model Convention.

L. Capacity-building

101. Dominika Halka and Harry Tonino of the Secretariat reported on progress made in developing and implementing the United Nations capacity development programme on international tax cooperation. Following a brief overview of the institutional background, intergovernmental mandate, history and main features of the programme, they reported on activities in each of the main focus areas. The first stage of the programme, which focused on the dissemination of the Committee's outputs, namely, the Model Convention and the Manual on Transfer Pricing, had been completed, and the programme now offered a full set of courses and other materials in the area of double tax treaty and transfer pricing, which were already tested and had been delivered on the ground.

102. The second stage of the programme focused on the development of practical tools that could be used as reference material but also serve as tools to deliver country-level work. These included several United Nations handbooks and United Nations practical portfolios on protecting the tax base of developing countries. Brian Arnold presented an overview of the practical portfolios, which were intended to assist tax officials in developing countries to (a) better understand the causes of base erosion and profit shifting in their countries; (b) identify the risks of base erosion and profit shifting in the context of their domestic tax law and network of tax treaties; and (c) identify and assess various options available to them to deal with such issues. The portfolios comprise case studies, examples, flow charts, check lists and sample legislation. The first set of practical portfolios focuses on (a) the taxation of income from services; (b) base-eroding payments of interest; and (c) tax incentives. The programme is gradually entering its third stage, which focuses on country-level work utilizing the above-mentioned practical portfolios. Work is to commence in several pilot countries on several topics during 2016.

103. Hugh Ault then presented two introductory papers on tax incentives, which were drafted by Eric Zolt at the request of the Financing for Development Office to provide input for several activities of the above-mentioned capacity development programme, focused on strengthening the capacity of developing countries to increase the potential for domestic revenue mobilization by enhancing their ability to effectively protect and broaden their tax bases. Wasteful tax incentives have been identified by developing countries as a major contributor to tax base erosion. The papers are aimed at providing developing countries with an overview of key concepts and issues regarding tax incentives, their use in attracting investment and their revenue and costs.

104. During the ensuing discussion, several participants expressed their appreciation and support for the activities carried out. Particular attention was paid to the extension of the activities to Africa, including francophone countries, inter alia, through the translation of relevant materials into French. Several points were made regarding the work on tax incentives, including the need for a coordinated approach to deal with harmful tax incentives and the challenge of securing the support of various ministries for the technical cost-benefit evaluation of tax incentives for a particular country.

M. International trade in goods — tax issues

105. Enrico Martino introduced this agenda item by recalling its background. He noted that significant issues might arise with respect to the valuation of goods in international commerce, as transactions between related parties could be subject to both customs and fiscal examinations, including for transfer pricing purposes, and might therefore be affected by rules that differed considerably.

106. Mr. Martino noted that his proposal at the tenth session had been to discuss the interrelationship of such issues in the Committee. However, the World Customs Organization (WCO) had worked with OECD and others and had since released a manual addressing the issues. WCO was not changing the rule, but recognizing challenges and the importance of looking at transfer pricing documentation in customs cases.

107. He noted that only a monitoring role was now required for the Committee. He would forward relevant materials to members and possibly present a paper. He indicated that the agenda item could be dealt with briefly, but that a presentation from WCO might be useful. One possible outcome would be for changes to the paragraphs in the Manual on Transfer Pricing dealing with the interplay of the customs and tax issues. That would, of course, be a matter for the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing to consider. Mr. Martino was thanked.

N. Article 23 A paragraph (4) — minority view

108. In 2014, at its tenth session, the Committee agreed to include in the next version of the Model Convention a new paragraph 4 to article 23 A corresponding to that in the OECD model. Wording reflecting the minority view opposing such a paragraph was, as agreed at the tenth session, to be included in the commentary on article 23 A in the next version of the Model Convention. The text reflecting the minority view could not be agreed at the eleventh session and could, if required, again be discussed at the next session of the Committee, after reflection on the minority view.

O. Other matters

109. In 2014, at its tenth session, the Committee noted the great importance of ensuring that key products of the Committee's work, such as the model and the Manual on Transfer Pricing, were translated into all official United Nations

languages in order to maximize effectiveness, and called for efforts, including by potential funders, to ensure that this would be done as quickly as possible, taking into account the requirements in terms of quality.

110. The Committee acknowledged the imminent retirement of Marilyn Elblein, expressing thanks for her many years of support to the Committee and recognizing her approximately 35 years of service at the United Nations.

Chapter IV

Dates and provisional agenda for the twelfth session of the Committee

111. The Committee decided to hold its 2016 session in Geneva from 11 to 14 October 2016.

112. In setting the agenda, the Committee agreed that some items would not be ready for substantive discussion in May of 2016, but that, in those cases, such as in relation to the finalization of the update of the Manual on Transfer Pricing, reports on progress would be appropriate. The order of proceedings will be provisionally set by the Committee prior to the next session. The provisional agenda for the twelfth session will be as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:

    (a) Issues related to the updating of the United Nations Model Tax Convention:

    (i) Article 1 (Persons covered): application of treaty rules to hybrid entities;

    (ii) Article 8 (Shipping, inland waterways transport and air transport): the meaning and coverage of the term “profits from the operation of ships or aircraft in international traffic”;

    (iii) Article 12 (Royalties): possible amendments to the commentary on Article 12 in relation to:

    a. Industrial commercial or scientific equipment;

    b. Software-related payments;

    (iv) Article 23 A: minority view on inclusion of paragraph (4);

    (v) Article 26 (Exchange of information): proposed code of conduct;

    (vi) Taxation of services:

    a. Commentary on the article on technical services;

    b. Proposed Article 12 alternative;

    (vii) Base erosion and profit-shifting;

    (b) Other issues:

    (i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

    (ii) Taxation of the extractive industries;

    (iii) Taxation of development projects;

(iv) Capacity-building;

(v) Mutual agreement procedure — dispute avoidance and resolution;

(vi) International trade in goods — tax issues;

(vii) Tax incentives — presentation by delegate from the International Monetary Fund.

4. Dates and provisional agenda for the thirteenth session of the Committee.

5. Adoption of the report of the Committee on its twelfth session.

Chapter V

Adoption of the report of the Committee on its eleventh session

113. The Committee approved and adopted the present report for submission to the Economic and Social Council, with the text to be settled after the session.

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