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

New York, 27-30 March 2023

Item 3(c) of the provisional agenda

**Issues related to the United Nations Model Double Taxation Convention between  
Developed and Developing Countries**

**Co-Coordinator's Report**

***Summary***

At its Twenty-third Session, the Committee of Experts established the Subcommittee on the Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries and agreed on certain priorities for the Subcommittee's work during this Membership of the Committee of Experts.

At its Twenty-fourth Session in April 2022, the Committee approved the Subcommittee's proposed plan on how to take forward work on those priorities, as well as on several other issues raised by participants in the Subcommittee.

This Co-Coordinator's Report is provided to the Committee ***for information*** at its Twenty-sixth Session. The Subcommittee has also produced three notes to be considered by the Committee. *Proposal for the inclusion of a general "subject to tax" rule in the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2023/CRP.12) is submitted ***for final approval***, after first consideration at the last Session. *The inclusion of software in the definition of royalties* (E/C.18/2023/CRP.13), and *Proposal for a revision to Article 8 (Alternative B) of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2023/CRP.14) are both submitted for ***a first consideration***.

## **Scope and Priority of Work as Established by the Committee of Experts**

1. At its Twenty-third Session, the Committee of Experts on International Cooperation in Tax Matters considered note [E/C.18/2021/CRP.22](#), on the work relating to the United Nations Model Double Taxation Convention between Developed and Developing Countries (the UN Model). That note described the work on a proposal to include payments for computer software within the definition of royalties in Article 12 of the UN Model, as well as a number of additional issues that had been identified by the last Membership of the Committee but which that membership had not had a chance to address.
2. The Committee established a Subcommittee on the Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries with the following mandate:

The Subcommittee is mandated to consider, make recommendations and provide proposed drafting for the next update of the United Nations Model Double Taxation Tax Convention (the Update) focusing on issues of the most relevance to developing countries.

The Subcommittee will report on its work to the Committee at its twenty-fourth session in 2022, and at each session thereafter, with a view to making a recommendation as to the timing and content of the Update no later than the Twenty-ninth Session in 2024.

In undertaking its work, the Subcommittee may wish to consult with relevant stakeholders.

3. At the Twenty-fourth Session, the Subcommittee proposed a work program to address priorities identified by the Committee Members at the Twenty-third Session, described the process by which the work on each topic would be undertaken and provided the following rough order in which issues would be submitted to the Committee for consideration:

- Inclusion of Payments for Computer Software in the Definition of Royalties
- Introduction of a Subject-to-Tax Rule in the UN Model
- Extractives and Other Natural Resources
- The Treatment of Services, Including Issues of Overlap
- International Shipping Activities
- Income derived from Cross-Border Insurance Activities
- Other Issues

4. At the Twenty-fifth Session, the Subcommittee submitted papers on two topics – a subject-to-tax rule and computer software – for the consideration of the Committee.

## **Progress Made by the Subcommittee on its Work Program**

5. The Subcommittee has held two virtual meetings since the Twenty-fifth Session, on 9-11 January 2023 and 20-22 February 2023. At those meetings, it had the opportunity to make progress on each of the priorities identified in paragraph 3 as described herein, although the order in which issues are likely to be submitted to the Committee has changed somewhat.

*Introduction of a Subject-to-Tax Rule in the UN Model*

6. At its Twenty-fifth Session, the Committee considered [E/C.18/2022/CRP.23](#), which included the text of a proposed subject-to-tax rule and identified issues that would be addressed in the Commentary. At its meetings in January and February, the Subcommittee produced E/C.18/2023/CRP.12, a revised proposal, including proposed Commentary on the provision. Because the Subcommittee was able to reach agreement on how to address the issues raised by Committee Members and Observers during the Twenty-fifth Session, the paper is submitted to the Committee for final approval at the Twenty-sixth Session.

*Inclusion of Payments for Computer Software in the Definition of Royalties*

7. At its Twenty-fifth Session, the Committee agreed that the Subcommittee should work on developing an expanded definition of royalties that refers to computer software, including relevant commentary on what would or would not be covered by such an expanded definition (without prejudging whether that expanded definition would be added to the text of Article 12 or be included as a minority position in the Commentary). At its meetings in January and February, the Subcommittee was able to agree on a proposal for the text of a treaty provision and accompanying Commentary, which are presented to the Committee in E/C.18/2023/CRP.13 for a first consideration. The presentation of a draft Commentary does not mean that a decision has been made to expand the definition in the text of the Convention; rather the draft Commentary is provided to allow Committee Members to decide whether to do so, a decision that likely will be taken at the Twenty-seventh Session.

*International Shipping Activities*

8. The third issue presented to the Committee for discussion at the Twenty-sixth Session is the treatment of income from international shipping and air transport. At the Twenty-fourth Session, the issue was described as:

Whether alternative B of article 8 of the United Nations Model Convention, dealing with income from shipping activities, should be replaced with a provision more consistent with current treaty practice;

The Subcommittee had a first substantive discussion of the topic at its meeting in January 2023, where some participants in the Subcommittee argued for a more expansive reconsideration of Article 8. The paper presented to the Committee, E/C.18/2023/CRP.14, asks for the guidance of the Committee on the drafting of a revised provision that would allow for source State taxation of income from international shipping and air transport. In addition, the note sets out the views of those who argue for eliminating the current alternatives in Article 8 and adopting a single rule allowing for source State taxation of income from international shipping and air transport. The Committee is asked for its guidance regarding whether the Subcommittee should pursue this option.

*The Treatment of Services, Including Issues of Overlap*

9. At its meeting in June 2022, the Subcommittee considered a paper on the scope of various services provisions already included in the UN Model. Later, a Committee Member proposed that work proceed on expanding the Commentary on Article 14. There was general agreement that the Committee

should do so as Article 14 continues to be included in new treaties despite being eliminated from the OECD Model.

10. There is a significant amount of, but not complete, overlap between the two subjects, which were discussed at both the January and February meetings of the Subcommittee. The Subcommittee continues to discuss the best way to provide additional clarity with respect to both topics, which may require changes to the text of the UN Model as well as additions to its Commentaries. The Subcommittee will provide a paper to the Committee on the Article 14 issues for a first discussion at the Twenty-seventh Session. The paper on overlap issues may be presented at the Twenty-seventh or Twenty-eighth Session, depending on the press of other work.

#### *Extractives and Other Natural Resources*

11. The Subcommittee has been coordinating with the Subcommittee on Extractives Industries, with several participants from each subcommittee joining in the others' meetings since the Twenty-fifth Session. In particular, at the January meeting of the Subcommittee on the UN Model, several participants from the Extractives Subcommittee joined a discussion of how best the Subcommittee on Extractives could contribute to the work of the Subcommittee on the UN Model.

#### *Income derived from Cross-Border Insurance Activities*

12. The Subcommittee considered a Secretariat paper on this issue at its first meeting in January 2022. A revision of that paper was discussed at the fourth meeting of the Subcommittee in January 2023. The Subcommittee hopes to present a paper on this issue at the Twenty-seventh Session.

#### *Other Issues*

13. The Subcommittee has considered several other issues. One is a technical issue regarding the interaction between article 21(3) and the source rule of Article 18, alternative B, which was discussed at the January 2023 meeting. No obvious answer having presented itself, the Subcommittee will continue to discuss it at future meetings. The Subcommittee hopes to return to the issue of Article 6, an issue discussed in June 2022, at its next meeting.

#### **Future Meetings of the Subcommittee**

14. The Subcommittee plans to meet twice before the Twenty-seventh Session of the Committee.

#### **Requested Input from the Committee**

15. The Subcommittee has produced three notes to be considered by the Committee at its Twenty-sixth Session. *Proposal for the inclusion of a general "subject to tax" rule in the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2023/CRP.12) is submitted for final approval, after first consideration at the last Session. *The inclusion of software in the definition of royalties* (E/C.18/2023/CRP.13), and *Proposal for a revision to Article 8 (Alternative B) of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2023/CRP.14) are both submitted for a first consideration.