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

Geneva, 17-20 October 2023

Item 3(c) of the provisional agenda

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

**Co-Coordiators' 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.

This note is provided to the Committee *for information* at its Twenty-seventh Session. It describes the Subcommittee's activities since the Twenty-sixth Session. The substantive work of the Subcommittee is presented in separate documents. (1) *The inclusion of software in the definition of royalties* (E/C.18/2023/CRP.43) is submitted for *review* and *final approval*. The following papers are submitted for *discussion*: (2) *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.44), (3) *Proposed Revision of Commentary on Article 14* (E/C.18/2023/CRP.45) and (4) *The treatment of income from cross-border insurance activities* (E/C.18/2023/CRP.46).

## **I. 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 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 the following priorities identified by the Committee Members at the Twenty-third Session:

- 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 ([E/C.18/2022/CRP.23](#)) and computer software ([E/C.18/2022/CRP.24](#)) – for consideration by the Committee.

5. At the Twenty-sixth Session, the Subcommittee submitted three notes for the Committee's consideration. *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](#)) was approved. The Committee had a first discussion of *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](#)).

## II. Recent Progress Made by the Subcommittee on its Work Program

6. The Subcommittee has held two meetings since the Twenty-sixth Session. An in-person meeting was held on 20-23 June 2023 in Brussels. A virtual meeting was held 1, 5 and 13 September 2023. At those meetings, the Subcommittee made progress on each of the remaining priorities identified in paragraph 3, as described below.

### *(1) Inclusion of Payments for Software in the Definition of Royalties*

7. At its Twenty-sixth Session, the Committee had a first discussion of a proposal ([E/C.18/2023/CRP.13](#)) for the text of a treaty provision and accompanying Commentary addressing this issue, without prejudging whether an expanded definition of royalties to include software would be added to the text of Article 12 or included as a minority position in the Commentary. After the Twenty-sixth Session, one minor clarification was made to the text of the proposed Commentary in response to a comment from the business sector. The paper is now submitted to the Committee for *final approval*, as described in E/C.18/2023/CRP.43.

### *(2) International Shipping Activities*

8. The Committee had a first discussion of a note ([E/C.18/2023/CRP.14](#)) on the treatment of income from international shipping and air transport at its Twenty-sixth Session. That paper asked 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. The report from the Twenty-sixth Session describes the discussion of the paper:

24. Ms. Smith presented the paper on article 8 (E/C.18/2023/CRP.14). In developing its work programme, the Subcommittee had anticipated that this work would be limited to revising article 8 (alternative B), which provided for formulary taxation of income from international shipping activities but not international air transport. The Subcommittee proposed to draft a new provision because very few existing treaties used the version of source State taxation set out in alternative B. The paper therefore included a draft provision that was more consistent with provisions actually used in bilateral tax treaties.

25. However, Ms. Smith noted that discussions in the Subcommittee had also raised two additional questions: (a) whether the proposed provision (allowing for source State taxation) should apply only to international shipping activities or also to air transport and (b) whether the proposed provision should be the only option in article 8 of the Model Convention, eliminating current alternative A, which provided for exclusive residence State taxation of income from international shipping and air transport.

26. A lively discussion was held on those issues. Although several members and observers noted that they did not see a relevant difference between shipping and air transport, others noted that shipping companies might pay relatively low income taxes because of the jurisdictions in which they were resident and the prevalence of tonnage taxes.

27. Some members and observers supported the elimination of alternative A because it resulted in only one State collecting any revenue owing to the imbalance between developed and developing countries in terms of number of ships and aircraft owned. Others raised objections to the elimination of alternative A. One observer, representing the shipping industry, raised a number of arguments in favour of maintaining the status quo and against revising alternative B. One member suggested an option not addressed in the paper: to simply drop article 8, so that the relevant income would fall under article 7.

28. Ms. Smith addressed the latter point by noting that the deletion of article 8 would not necessarily allow source States to tax the relevant activities, because shipping companies might well be able to avoid having permanent establishments in many countries. She then summarized the discussion as expressing support for continued work on the drafting of the new alternative B and expressing some support for extending it to aircraft operated in international traffic. There were mixed views regarding the retention of alternative A, although the majority of those who spoke were in favour.

9. The Subcommittee discussed the subject at both of its meetings since the Twenty-sixth Session. A possible revised text for the Article and new Commentary text that reflects the discussions at the Committee Session, plus the subsequent technical discussions in the Subcommittee, are submitted to the Committee in E/C.18/2023/CRP.44 for discussion. The Subcommittee requests guidance from the Committee on a number of specific issues in order to assist in re-drafting the text and Commentary before the Twenty-eighth Session.

*(3) The Treatment of Services, Including Issues of Overlap*

10. 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.

11. There is significant but not complete overlap between the two subjects. Since the Twenty-sixth Session, the Subcommittee has focused on addressing the Article 14 issues, preparing E/C.18/2023/CRP.45, which represents a proposed revised Commentary on Article 14 for *discussion* at the Twenty-seventh Session. The Subcommittee plans to turn back to the paper on overlap issues in 2024.

*(4) Income derived from Cross-Border Insurance Activities*

12. The Subcommittee discussed this issue at its first, fourth, sixth and seventh meetings. The paper E/C.18/2023/CRP.46 sets out the results from these discussions, proposing the deletion of paragraph 6 of Article 5 and the addition of a new withholding tax that could be included in a new paragraph 6 of Article 7, and is presented for *discussion* at the Twenty-seventh Session.

*(5) Extractives and Other Natural Resources*

13. The Subcommittee has been coordinating with the Subcommittee on Extractives Industries, with several participants from each subcommittee joining in the other's meetings since the Twenty-fifth Session. At the meetings held by each Subcommittee in September 2023, it was decided not to present a draft provision until these two workstreams converge. The Subcommittee is hoping to have another meeting with the Extractives Subcommittee's drafting group on Permanent Establishment and Other Income Issues in November 2023. It does not seek guidance on these issues at this Session.

*(6) Other Issues*

14. 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. The Subcommittee had a very useful discussion of this topic at its sixth meeting in June 2023 and expects to return to it after the Twenty-seventh Session. In addition, the Subcommittee hopes to return to several technical issues arising under Article 6 in 2024. It does not seek guidance on these issues at this Session.

**III. Proposed Work Plan and the Sustainable Development Goals**

15. At its Twenty-third Session, the Committee agreed to discuss taxation and the Sustainable Development Goals regularly during its sessions, and to have subcommittees reflect on the links between their work and the SDGs. The Subcommittee on the Update of the UN Model recognizes that by promoting fair and effective tax systems, which support both revenue and trade and investment for sustainable 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. In this regard, the work of the Subcommittee, in supporting effective guidance in the areas described, 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 interlinked tax, trade and investment policy objectives. This builds greater certainty for all stakeholders in tax systems.

**IV. Issues for the Committee**

16. As noted above, The Subcommittee has produced a note on *The inclusion of software in the definition of royalties* (E/C.18/2023/CRP.43) for **final approval**. Three papers, *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.44), *Proposed Revision of Commentary on Article 14* (E/C.18/2023/CRP.45) and *The treatment of income from cross-border insurance activities* (E/C.18/2023/CRP.46), are submitted for **discussion**. Each of the papers includes specific questions for the Committee's consideration.