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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-Coordinator's Report: Proposed Revision of Commentary on Article 14**

***Summary***

This note is provided to the Committee for *discussion* at its Twenty-seventh Session.

At the Twenty-fifth Session of the Committee of Experts, several Members of the Committee proposed that the Committee should expand the existing Commentary on Article 14 to address a number of matters. Such guidance is necessary because a large number of bilateral treaties being negotiated by developing countries include Article 14, despite it being deleted in its entirety from the OECD Model in 2000. Accordingly, the Subcommittee on the Update of the UN Model took up this work after the Twenty-fifth Session of the Committee.

The Committee is asked to *have a first discussion* of the Subcommittee's proposed Commentary to Article 14 in paragraph 3 hereof. In particular, Members of the Committee are asked to:

- (a) provide their views regarding whether paragraph 1(c) should be reinstated in the text of Article 14 or be included as an alternative or minority view in the Commentary;
- (b) provide an initial indication of whether they support the position in paragraph 12 or in paragraph 14 of the proposed Commentary;
- (c) depending on the balance of views regarding (b), discuss whether the text of Article 14 should be modified in line with one of the revised provisions in those paragraphs; and
- (d) consider whether the discussion of net vs. gross basis taxation in paragraphs 22 to 24 of the proposed Commentary reflects the views of the Committee Members or whether it should adopt a clear position in favor of one interpretation or the other.

## I. Introduction

1. At the 25th Session of the Committee of Experts, several Members of the Committee proposed that the Committee should expand the existing Commentary on Article 14 to address a number of matters. Such guidance is necessary because a large number of bilateral treaties being negotiated by developing countries include Article 14, despite it being deleted in its entirety from the OECD Model in 2000. Accordingly, the Subcommittee on the Update of the UN Model took up this work after the 25<sup>th</sup> Session of the Committee.

## II. Proposed New Commentary on Article 14

2. In this section, the Subcommittee proposes a new draft Commentary on Article 14 to address the issues raised by Members of the Committee. In addition to addressing a number of issues regarding the application of the Article, the new draft eliminates a long quotation from the Commentary on the 1997 OECD Model, which was confusing in certain respects because of important differences between Articles 7 and 14 of the UN Model and Articles 7 and 14 of the OECD Model (even when it still included Article 14).

3. The new Commentary would read as follows:

### *Article 14*

#### INDEPENDENT PERSONAL SERVICES

##### *A. GENERAL CONSIDERATIONS*

1. *This article of the United Nations Model Tax Convention does not correspond to any provision of the OECD Model Tax Convention since the OECD deleted Paragraph 1(a) and paragraph 2 of Article 14 of the United Nations Model Tax Convention reproduce the essential provisions of Article 14 of the 1997 version of the OECD Model Tax Convention. The ~~the~~ whole of Article 14 and the Commentary thereon were deleted from the OECD Model Tax Convention on 29 April 2000. Under Article 14 of the UN Model, income from independent personal services derived by a resident of a Contracting State may be taxed in the other Contracting State if the income is attributable to a fixed base in that other State that is regularly available to the resident or Paragraph 1(b) allows the country of source to tax income from independent personal services in one additional situation not covered by paragraph 1 of Article 14 of the 1997 OECD Model Tax Convention: while the former OECD Model Tax Convention allowed the source country to tax income from independent personal services only if the income was attributable to a fixed base of the taxpayer, the United Nations Model Tax Convention also allows taxation at source if the taxpayer is present in that country for more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.*

2. In the discussion of Article 14, some former members of the Ad Hoc Group of Experts from developing countries expressed the view that taxation by the source country should not be restricted by the criteria of existence of a fixed base and length of stay and that the source of income should be the only criterion. Some members from developed countries, on the other hand, felt that the exportation of skills, like the exportation of tangible goods, should not give rise to taxation in the country of destination unless the person concerned has a fixed base in that country comparable to a permanent establishment. They therefore supported the fixed base criterion, although they also

accepted that taxation in the source country is justified by continued presence in that country of the person rendering the service. Some members from developing countries also expressed support for the fixed base criterion. Other members from developing countries expressed *a* preference for the criterion based on length of stay.

3. In developing the 1980 Model, several members from developing countries had proposed a third criterion, namely, the amount of remuneration. Under that criterion, remuneration for independent personal services could be taxed by the source country if it exceeded specified amount, regardless of the existence of a fixed base or the length of stay in that country.

4. As a compromise, the 1980 Model included three alternative criteria found in subparagraphs (a) to (c) of paragraph 1, the satisfaction of any one of which would give the source country the right to tax the income derived from the performance of personal activities by an individual who is a resident of the other State. However, in 1999, the former Group of Experts decided to omit the third criterion, which was mentioned in subparagraph (c), namely the amount of remuneration, therefore retaining the first two criteria in subparagraphs (a) and (b). *This decision was reflected in the version of the UN Model released in 2001.*

**[NB: Paragraphs 5 and 6 have been moved from their prior location to consolidate the discussion of subparagraph (c).]**

57. ~~Prior to its deletion, subparagraph (c) provided a further criterion for source country tax when neither of the two conditions specified in subparagraphs (a) and (b) is met. It was provided that if the remuneration for the services performed in the source country exceeds a certain amount (to be determined in bilateral negotiations), the source country may tax, but only if the remuneration is received from a resident of the source country or from a permanent establishment or fixed base of a resident of any other country which is situated in that country.~~

68. *At the time subparagraph (c) was deleted, it was observed that any monetary ceiling limit fixed for this purpose would become meaningless over a period of time due to inflation. They further argued that including the provision and would only have the effect of limiting the amount of potentially valuable services that the country will be able to import. They also noted that* ~~Moreover,~~ *the provisions of subparagraph (c) appeared only in 6 per cent of the bilateral tax treaties finalized between 1980 and 1997.<sup>1</sup> It was accordingly decided to delete paragraph 1(c) of Article 14. However, some developing countries have continued to insist on the inclusion of subparagraph 1(c) and have successfully negotiated for this provision in their bilateral tax treaties. Moreover, [a majority/minority] of Committee Members find the arguments in favor of deleting paragraph 1(c) unpersuasive. They do not believe that taxpayers will cease to perform services in a jurisdiction because they are subject to tax, so long as they are relieved from double taxation. They also believe that a tax imposed under paragraph 1 (c) might discourage excessive payments for such services, which could otherwise reduce the tax base of the source State. In their view, it is also appropriate that, in respect of the furnishing of services, revenue that exceeds a threshold should in itself be enough to trigger taxing rights.*

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<sup>1</sup> See W.F.G Wijnen and J.J.P de Goede, “United Nations—The UN Model in Practice 1997–2013”, *IBFD Bulletin for International Taxation*, 2014 (Volume 68), No. 3, section 2.16.4.2.

7. *Those countries that want to include a third criterion that refers to the amount paid for such services may use the following language:*

*(c) If the remuneration for that person's activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year \_\_\_ [the amount is to be established through bilateral negotiation].*

*The argument that inflation could mean that the threshold would become meaningless could be addressed, when feasible under the laws of the parties to a bilateral treaty, by allowing the competent authorities to adjust the threshold amounts as necessary. This could be accomplished by adding “, which may be adjusted from time to time by agreement of the competent authorities” at the end of paragraph 1(c).*

85. Subparagraph (a), which *is the same as* reproduces the sole criterion found in the 1997 OECD Model Tax Convention, provides that the income may be taxed if the individual has a fixed base regularly available to him for performing his activities. Though the presence of a fixed base gives the right to tax, the amount of income that is subject to tax is limited to that which is attributable to the fixed base.

96. Subparagraph (b), as amended in 1999, extends the source country's right to tax by providing *provides* that the source country *also* may tax if the individual is present in the country for a period or periods aggregating at least 183 days in any twelve-month period commencing or ending in the fiscal year concerned, even if there is no fixed base. Only income derived from activities exercised in that country, however, may be taxed. Prior to *an* the amendment *in the 2001 version of the UN Model*, the requirement of minimum stay in the Contracting State was a “period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned”. A member from a developed country, however, expressed a preference for retaining the previous wording for technical reasons. By virtue of the amendment, the *relevant time period is calculated in the same way under provisions of paragraph 1(b) of Article 14 have been brought on a par with those of and paragraph 2(ba) of Article 15 relating to the minimum period of stay in the other Contracting State.*

109. *In 2008, the Committee of Experts decided to retain Article 14 in the UN Model because many believed that eliminating Article 14 (and addressing independent personal services in Articles 5 and 7) would reduce source country taxing rights. This concern was based on the view that the concept of a fixed base used in Article 14 is broader than that of a permanent establishment (not requiring the commercial and geographical coherence required of a permanent establishment, for example). Another argument made for retaining Article 14 was that some persons, such as individuals and partnerships, are more readily dealt with under Article 14 than under Article 5. There were also concerns that there would be significant administrative effort involved in explaining the change and implementing it, especially in States with small tax administrations. There was also a discussion regarding whether Article 14 might allow taxation on a gross basis while Article 7 generally requires net basis taxation, although it was also pointed out that the Commentary on Article 14 said that expenses “should”*

*be allowed.<sup>2</sup> These arguments generally still underlie many countries' practice of including Article 14 in their bilateral treaties. In addition, Article 14 applies to activities that would not be taxable under Article 7 because Article 14 does not include an exclusion equivalent to paragraph 4 of Article 5 on preparatory or auxiliary activities. A final argument made in 2008, that the proposed requirement of the "same or a connected project" could have reduced source State taxing rights, is no longer relevant as that requirement has since been eliminated from Article 5.*

*11. As part of the [202 ] update to the UN Model, the Committee agreed to provide additional guidance regarding the interpretation of Article 14. An initial question regarding Article 14 is its scope. The reference to "income derived by a resident" in the first paragraph of Article 14 raises the question of whether it applies to both individuals and to entities or only to individuals. Members considered the different arguments set out in the succeeding paragraphs and, while some believed it only applies to only to individuals, others believed that it applies to both individuals and entities. A third group found that there were compelling arguments for both interpretations. Due to the conflicting views on the scope of the Article, countries may want to discuss the issue with their counter party and, if necessary, amend paragraph 1 to ensure a common understanding and reduce difficulties of interpretation regarding the article's scope.*

*12.9 As part of that review, [a majority/minority] of the Committee<sup>3</sup> agreed that Article 14, as drafted, applies only to individuals, based on the structure and history of the UN Model. In a schedular system, such as the UN and OECD Models, different rules apply to different types of income; it is crucial that one and only one rule should apply to determine the Contracting States' taxation rights with respect to a specific item of income. In this regard, the intentions and understanding of the original drafters of the UN Model are relevant. The former Group of experts, which drafted the original UN Model in 1980, discussed the relationship between Article 14 and paragraph 3(b) of Article 5. ~~It was~~The Group of Experts generally agreed that remuneration paid directly to an individual for the performance of activities in an independent capacity was subject to the provisions of Article 14. Payments to an enterprise in respect of the furnishing by that enterprise of the activities of employees or other personnel are subject to Articles 5 and 7. The remuneration paid by the enterprise to the individual who performed the activities is subject either to Article 14 (if he is an independent contractor engaged by the enterprise to perform the activities) or Article 15 (if he is an employee of the enterprise). However, even among those Members who believe that Article 14 generally applies only to individuals, a [majority/minority] would apply Article 14 to an individual's distributive share of profits derived through an entity or arrangement that is treated as fiscally transparent and that is engaged in providing services described in Article 14. For example, they would view Article 14 as applying to income derived by a resident of State R who is an architect and sole proprietor of an architecture firm that is fiscally transparent and has offices and associates in State P.*

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<sup>2</sup> See E/2008/45, Report on the Fourth Session of the Committee of Experts on International Cooperation in Tax Matters, paragraph 33.

<sup>3</sup> Paragraph 30 of the Introduction to the UN Model describes the manner in which minority views will be described in the Commentaries. When there are different views on an issue, the size of the majority (referred to as "the Committee") can be discerned by the way in which the minority is described. (That is, a "small minority" implies a large majority.) It was necessary to make an assumption regarding the balance of different views in order to draft the Commentary; this assumption was based on the discussions in the Subcommittee and will be finalized after discussions in the Committee.

13. If the parties *want to include language in a bilateral treaty* believe that further to clarification of *make clear* the relationship between Article 14 and Articles 5 and 7 is needed, they may make such clarification in the course of negotiations. *and that Article 14 applies only to individuals, paragraph 1 could be drafted as follows:*

*1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:*

*(a) if the individual has a fixed base regularly available (to him) in the other Contracting State for the purpose of performing professional services or other activities of an independent character; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or*

*(b) if the individual is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from professional services or other activities of an independent character performed by the individual in that other State may be taxed in that other State.*

10. Since Article 14 of the United Nations Model Tax Convention contains all the essential provisions of Article 14 of the 1997 OECD Model Tax Convention, the Committee considers that the following part of the Commentary on Article 14 of the 1997 OECD Model Tax Convention is applicable to Article 14 of this Model:

1. The Article is concerned with what are commonly known as professional services and with other activities of an independent character. This excludes industrial and commercial activities and also professional services performed in employment, e.g. a physician serving as a medical officer in a factory. It should, however, be observed that the Article does not concern independent activities of artistes and sportsmen, these being covered by Article 17.

2. The meaning of the term "professional services" is illustrated by some examples of typical liberal professions. The enumeration has an explanatory character only and is not exhaustive. Difficulties of interpretation which might arise in special cases may be solved by mutual agreement between the competent authorities of the Contracting States concerned.

3. The provisions of the Article are similar to those for business profits and rest in fact on the same principles as those of Article 7. The provisions of Article 7 and the Commentary thereon could therefore be used as guidance for interpreting and applying Article 14. Thus the principles laid down in Article 7 for instance as regards allocation of profits between head office and permanent establishment could be applied also in apportioning income between the State of residence of a person performing independent personal services and the State where such services are performed from a fixed base. Equally, expenses incurred for the purposes of a fixed base, including executive and general expenses, should be allowed as deductions in determining the income attributable to a fixed base in the same way as such expenses incurred for the purposes of a permanent establishment [...]. Also in other respects Article 7 and the Commentary thereon could be of assistance for the interpretation of Article 14, e.g. in determining whether computer software payments should be classified as commercial income within Article 7 or 14 or as royalties within Article 12.

~~4. Even if Articles 7 and 14 are based on the same principles, it was thought that the concept of permanent establishment should be reserved for commercial and industrial activities. The term “fixed base” has therefore been used. It has not been thought appropriate to try to define it, but it would cover, for instance, a physician’s consulting room or the office of an architect or a lawyer. A person performing independent personal services would probably not as a rule have premises of this kind in any other State than of his residence. But if there is in another State a centre of activity of a fixed or a permanent character, then that State should be entitled to tax the person’s activities.~~

***14. 11. A [majority/minority] of Committee Members<sup>4</sup> Some countries interpret Article 14 differently, holding that the term “resident” in subparagraph (a) is broad enough also to apply to entities. They note that many activities, including the “liberal professions”, that used to be carried out mainly by solo practitioners now routinely are conducted by large enterprises. They also expressed concern about the possibility, raised in paragraph 12, of applying Article 14 to service partnerships and not to professional service corporations, which are more prevalent in civil law countries. from the way the Article is interpreted in paragraphs 9 and 10 above. These countries Countries that may, therefore, wish to clarify their positions and agree bilaterally on the relevant aspects, if those have not already been dealt with, that Article 14 applies to both individuals and entities, could redraft paragraph 1 as follows:***

***1. Income derived by any person that is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:***

***(a) if that person has a fixed base regularly available to it in the other Contracting State for the purpose of performing professional services or other activities of an independent character; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or***

***(b) if the person is or employs an individual, that individual is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from professional services or other activities of an independent character performed by the relevant individual in that other State may be taxed in that other State.***

***Inclusion of this language in a bilateral treaty creates the possibility that income received by an entity could be described in both Article 7 and Article 14. If so, Article 14, and not Article 7, would determine the source State’s taxing rights by reason of paragraph 6 of Article 7. Article 14 does not contain a provision similar to paragraph 4 of Articles 10, 11, 12 and 12A, and paragraph 8 of Article 12B, that would result in taxation of that***

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<sup>4</sup> Paragraph 30 of the Introduction to the UN Model describes the manner in which minority views will be described in the Commentaries. When there are different views on an issue, the size of the majority (referred to as “the Committee”) can be discerned by the way in which the minority is described. (That is, a “small minority” implies a large majority.) It was necessary to make an assumption regarding the balance of different views in order to draft the Commentary; this assumption was based on the discussions in the Subcommittee and will be finalized after discussions in the Committee.

*income under Article 7, even if, for example, the taxable entity had a permanent establishment in the source State under subparagraph 3(b) of Article 5.*

## **B. COMMENTARY ON THE PARAGRAPHS OF ARTICLE 14**

### **Paragraph 1**

15. *Paragraph 1 of Article 14 provides the general rule that a resident of a Contracting State that derives income from performing professional services or other services in an independent capacity may be taxed in its State of residence. Such income may also be taxed in the other Contracting State but only if either (a) the income is attributable to a fixed base in that other State that is regularly available to that resident for the purpose of performing its activities or (b) the resident is present in the country for a period or periods aggregating at least 183 days in any twelve-month period commencing or ending in the fiscal year concerned, even if there is no fixed base.*

16. *The term "fixed base", which is used in subparagraph (a) of paragraph 1, is not defined in the UN Model. Its meaning is understood to be similar, but not identical, to that of the term "fixed place of business," as used in Article 5 (Permanent Establishment). It would encompass, for example, a physician's consulting room or the office of an architect or a lawyer. At the time that Article 14 was first included in tax treaties, it was thought that a "person performing independent personal services would probably not as a rule have premises of this kind in any other State than that of his residence."<sup>5</sup> However, it is now quite common for this situation to arise.*

17. *Although the term "fixed base" is analogous to a "fixed place of business" in paragraph 1 of Article 5, other provisions of Article 5 would not apply for purposes of applying paragraph 1(a) of Article 14. For example, Article 14 does not include the exceptions for preparatory and auxiliary activities in paragraph 4 of Article 5, so a person could be taxable in a Contracting State under paragraph 1(a) even if the only activities performed in that State are market research, for example.*

18. *The term "regularly available" also is not defined in the UN Model. Whether a fixed base is regularly available to a person will be determined based on all the facts and circumstances. In general, the term encompasses situations where a fixed base is at the disposal of the person whenever services are performed in that State. It is not necessary that the person regularly uses the fixed base, only that the fixed base be regularly available to that person. For example, a resident of State R who is an architect and sole partner of an architecture firm that has offices and associates in State P would be considered to have a fixed base regularly available to him in State P if he could use office space in the State P offices whenever he wished to conduct his professional activities in State P, regardless of how frequently he conducted his professional activities in the other State and how the firm used the space when he did not wish to use it. On the other hand, a doctor who had no office in the other State or general privileges at any hospital in that other State would not be considered to have a fixed base regularly available to him even if he performed surgery in that State once or twice a year at the request of a local hospital.*

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<sup>5</sup> See paragraph 4 of the Commentary on Article 14 of the 1997 OECD Model.



19. *However, only income attributable to that fixed base is taxable under subparagraph 1(a). For example, assume Individual X, a resident of State R, is the sole partner in a law firm that has an office and associates in State S. Company S2, a resident of Country S, hires that law firm to represent S2 in connection with a securities issuance in Country R. At the beginning of the representation, Individual X meets with Company S2's general counsel from 14:00 to 17:00 for several days at Company S2's offices to go over the due diligence and securities offering requirements. Individual X drafts the offering documents and oversees the due diligence process from his office in State R. Even though Individual X has a fixed base available to him in State S within the meaning of subparagraph (a), the income is not taxable in State S because it is not attributable to that fixed base.*

20. *Under subparagraph (a), income can be attributable to the fixed base even if services are performed outside that State. For example, Individual R is a lawyer who lives in State R but is licensed to practice law in State F and State S. She is careful to spend less than 183 days in States F and S in order to avoid becoming a resident therein. Most of her clients are located in State F and State F is the only country in which she maintains an office outside of her home. She is hired by Company F, one of her State F clients, to litigate a negligence case in State S that relates to injuries alleged to have been caused by a product manufactured in State F and sold through its distributor subsidiary in State S. Because information about the product design and manufacturing, and the marketing plan, is maintained at Company F's head office in State F, Individual R spends about two-thirds of her time on that case reviewing documents in Company F's head office and meeting with her State F client in her office or their premises to develop a trial strategy. About one-third of her time on the case is spent in State S conducting depositions of the plaintiffs and in court proceedings. Under these facts, the fees received from Company F are attributable to Individual R's office in State F, even though some of the services were performed in State S.*

21. *Subparagraph 1(b) provides an alternative basis for taxation. Under this rule, a Contracting State may tax income from independent personal services if a relevant individual's stay in that State is for a period or periods exceeding 183 days in the relevant 12-month period. For these purposes, an individual's stay is calculated similarly to the calculations under paragraph 2(a) of Article 15. That is, an individual's days of physical presence are counted, whether or not the individual is performing services on those days. If the individual is in the host State for at least the specified number of days, then only the income derived from that person's activities performed in that State may be taxed.*

22. *There continue to be differing views regarding whether Article 14 requires taxation on a net basis or allows the source State to tax on a gross basis. Many developing countries prefer taxation on a gross basis as they view it as simpler to apply in practice; Article 14 was retained in the UN Model at least in part because of the possibility that countries could impose tax on a gross basis under Article 14 while Article 7 generally requires taxation on a net basis. However, even Article 7 only addresses the attribution of expenses to the permanent establishment, not the actual deductibility of expenses, which is a matter of domestic law.<sup>6</sup> Those holding the view that Article 14 allows taxation*

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<sup>6</sup> See paragraph 24 of the Commentary on Article 7 of the UN Model, quoting paragraph 30 of the Commentary on Article 7 of the 2008 OECD Model.

*on a gross basis rely on the fact that the Article says nothing about how the income in question is to be computed. In that regard, it is similar to Article 17, the Commentary on which<sup>7</sup> asserts that it is up to a Contracting State's domestic law to determine the extent of any deductions for expenses.*

23. *The argument for net basis taxation is supported by the previous Commentary on Article 14 of the UN Model, which prior to [202 ] always had indicated that taxation under Article 14 should be on a net basis, by analogy to taxation of permanent establishments. Many countries would allow deductions for expenses incurred for the purposes of the fixed base or that are related to the provision of services described in subparagraph (b), including executive and general expenses, in the same way as for such expenses incurred for the purposes of a permanent establishment.*

24. *Irrespective of their domestic law, some countries may want to give the taxpayer an option to be taxed on a net basis in the treaty itself. This could be done through the inclusion of a paragraph drafted along the following lines:*

*Where a resident of a Contracting State derives income referred to in paragraph 1 and such income is taxable in the other Contracting State on a gross basis, such resident may, within [period to be determined by the Contracting States], request in writing to the other State that the income be taxable on a net basis in that State. Such request shall be allowed by that other State. In determining the taxable income of such resident in the other State, there shall be allowed as deductions those expenses deductible under the domestic laws of the other State which are incurred for the purposes of the activities exercised in the other State and which are available to a resident of the other State exercising the same or similar activities under the same or similar conditions.*

#### **Paragraph 2**

25. *Article 14 applies to “professional services” as well as “other activities of an independent character”. Paragraph 2 provides guidance regarding the first of these terms, but not the second.*

26. *The term “professional services” as used in the article includes the “liberal professions” – the independent activities of physicians and lawyers as well as engineers, architects, dentists and accountants. The list in subparagraph (b) is illustrative, not exhaustive. In addition, it does not define “other activities of an independent character”. This term includes all personal services performed by an independent contractor for its own account, whether as a sole proprietor or a partner, where the contractor receives the income and bears the risk of loss arising from the services. Article 14 therefore could cover the services performed by any skilled workers if those services are provided in an independent capacity.*

27. *However, Article 14 will not apply to the income of an individual from those types of independent services which are covered by Articles 15 through 20. Therefore, it does not apply to activities conducted in connection with employment. For example,*

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<sup>7</sup> See paragraph 2 of the Commentary on Article 17 of the UN Model, quoting paragraph 10 of the Commentary on Article 17 of the OECD Model.

*professional services performed in employment, such as a physician serving on the staff of a hospital, would be covered by Article 15 (Dependent personal services), not Article 14. Article 17 specifies that it applies notwithstanding Article 14, so the taxation of income of a professional musician that falls within Article 17 (Artistes and sportspersons) would be determined by that article, rather than Article 14.*

### ***Interaction with other Articles***

~~28~~<sup>12</sup>. Under paragraph 4 of Article 12A, if a resident of a Contracting State performs independent personal services (that are technical services within the meaning of paragraph 3 of Article 12A) in the other Contracting State through a fixed base that is regularly available to the resident and receives fees for those services, Article 14 will apply to those fees in priority to Article 12A. However, if a resident of one Contracting State provides independent personal services (that are technical services) that arise in the other Contracting State, but those services are not provided through a fixed base in that other State, the fees for those services are taxable by that other State under paragraph 2 of Article 12A.

~~29~~<sup>13</sup>. Under paragraph 8 of Article 12B, if a resident of a Contracting State performs independent personal services (that are automated digital services within the meaning of paragraph 5 of Article 12B) in the other Contracting State through a fixed base that is regularly available to the resident and receives payments in consideration for those services, Article 14 will apply to those payments in priority to Article 12B. However, if a resident of one Contracting State provides independent personal services (that are automated digital services) that arise in the other Contracting State, but those services are not provided through a fixed base in that other State, the income derived from those services is taxable by that other State under Article 12B.

### **III. Issues for the Committee**

4. The Committee is asked to *have a first discussion* of the Subcommittee's proposed Commentary to Article 14 in paragraph 3 hereof. In particular, Members of the Committee are asked to:
  - (a) provide their views regarding whether paragraph 1(c) should be reinstated in the text of Article 14 or be included as an alternative or minority view in the Commentary;
  - (b) provide an initial indication of whether they support the position in paragraph 12 or in paragraph 14 of the proposed Commentary;
  - (c) depending on the balance of views regarding (b), discuss whether the text of Article 14 should be modified in line with one of the revised provisions in those paragraphs; and
  - (d) consider whether the discussion of net vs. gross basis taxation in paragraphs 22 to 24 of the proposed Commentary reflects the views of the Committee Members or whether it should adopt a clear position in favor of one interpretation or the other.