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

New York, 19-22 March 2024

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.

This note is provided to the Committee *for information* at its Twenty-eighth Session. It describes the Subcommittee's activities since the Twenty-seventh Session. The substantive work of the Subcommittee is presented in separate documents: (1) *Proposal for a revision to Article 8 (Alternative B) of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2024/CRP.12); (2) *The treatment of income from cross-border insurance activities* (E/C.18/2024/CRP.13); and (3) *The treatment of income arising from extractives and other natural resources* (E/C.18/2024/CRP.14). The first two papers include specific questions for the Committee's consideration while the paper on natural resources is presented for general discussion and guidance.

## **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). 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.

2. 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

3. The Committee approved the introduction of a subject-to-tax rule ([E/C.18/2023/CRP.12](#)) at its Twenty-sixth Session. At the Twenty-seventh Session, the Committee approved a new definition of royalties that includes software and accompanying Commentary on Article 12 ([E/C.18/2023/CRP.43](#)).

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

4. The Subcommittee has held multiple meetings since the Twenty-seventh Session. It held a joint meeting on natural resources with the Extractives Subcommittee drafting group on 1 December 2023. It also held additional meetings on 14 to 15 December 2023, 8 to 10 January 2024 and 12 to 13 February 2024; members of the Extractives Subcommittee also participated in the portions of those meetings where the taxation of natural resources were discussed. Members of the Subcommittee also participated in meetings of the Subcommittee on the Digitalized and Globalized Economy that took place after the Twenty-seventh Session.

5. At those meetings, the Subcommittee made progress on each of the remaining priorities identified in paragraph 2, as described below.

*(1) International Shipping Activities*

6. 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.

7. At the Twenty-seventh Session, the Subcommittee submitted a possible revised text (E/C.18/2023/CRP.44) for the Article and new Commentary that reflected the discussions at the Twenty-sixth Session. The report of the Twenty-seventh Session includes this description of the discussion on this subject:

18. Mr. Das presented a paper on a proposal for a revision to article 8 (alternative B) of the Model Convention (E/C.18/2023/CRP.44), for a first discussion. In the paper, a possible revised version of article 8 (alternative B) was set out that would allow the taxation at source of international transportation income. The Committee discussed (a) whether the revised provision should cover both international shipping and air transport, (b) whether the Model Convention should continue to include alternative A, which provides for exclusive residence State taxation of income from both international shipping and international air transport, and (c), if an option for exclusive residence State taxation was retained, whether the order of the two alternatives should be reversed to give greater prominence to the alternative allowing for source State taxation. While most members commenting supported coverage of both shipping and air transport in article 8, the discussion was inconclusive with regard to all three points. The Subcommittee would continue its work on the proposal and certain technical issues that were raised and present a revised version of the provision at the twenty-eighth session.

8. The Subcommittee has now prepared note E/C.18/2024/CRP.12, which focuses on Alternative B and its draft Commentary. ***That note includes a number of specific questions for the Committee so that the Subcommittee can present a complete draft of Article 8 and its Commentary for approval at the Twenty-ninth Session of the Committee.***

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

9. At its Twenty-seventh Session, the Committee considered E/C.18/2023/CRP.46, which proposed the deletion of paragraph 6 of Article 5 and the addition of a new gross-basis tax that could be included in a new paragraph 6 of Article 7. The report of the Twenty-seventh Session included this description of the discussion:

19. Mr. Protto presented a paper on the treatment of income from cross-border insurance activities (E/C.18/2023/CRP.46). In the paper, the Subcommittee set out its proposal to delete paragraph 6 of article 5 (under which a permanent establishment is deemed to exist where an insurance enterprise of a State collects premiums from, or insures risks in, the other Contracting State) and to introduce a new paragraph 6 of article 7 (under which taxation of the relevant premiums on a gross basis would be allowed). There was general support in the Committee for the substance of the change, but several members would prefer that the new rule be reflected in a stand-alone article rather than in a new paragraph in article 7. In that regard, it was noted that a new such provision should provide guidance regarding the source of premium income in the case of reinsurance and with regard to direct insurance that covered multiple entities and/or countries. The Subcommittee would continue its work on the proposal, including on the technical issues that were raised, with a view to presenting it for approval at the twenty-eighth session, if possible.

10. The Subcommittee has now prepared note E/C.18/2024/CRP.13, ***which proposes a new Article 12C with its draft Commentary, for the consideration of the Committee, including questions for further guidance so that it can present a complete draft of new Article 12C and its Commentary at the Twenty-ninth Session of the Committee for approval.***

*(3) Extractives and Other Natural Resources*

11. As noted above, the Subcommittee has been coordinating with the Subcommittee on Extractives Industries, with participants from the Extractives Subcommittee commenting on several drafts of a possible new provision. ***The Subcommittee has now prepared note E/C.18/2024/CRP.14, which proposes a new Article 5A with its draft Commentary, for first consideration by the Committee.***

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

12. 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. The Subcommittee therefore submitted E/C.18/2023/CRP.45, focused on the Article 14, for the Committee's consideration at its Twenty-seventh Session.

13. However, also at the Twenty-seventh Session, the Committee decided to pursue consideration of Article XX, which would potentially apply to all services, eliminating many of the overlap issues. It is also proposed that Article XX would replace Article 14. (See E/C.18/2024/CRP.8). ***Accordingly, the Subcommittee has stopped working on this issue until the Committee has reached a decision on Article XX. The Subcommittee will be prepared to make any consequential changes to the Commentaries to reflect any decisions made by the Committee on this issue.***

*(5) Other Issues*

14. The Subcommittee has considered several other issues. One is a technical issue regarding the scope of Article 21(3). The Subcommittee also had a first discussion of several technical issues arising under Article 6. It plans to return to these issues in 2024, before the Twenty-ninth 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 three notes for discussion: (1) *Proposal for a revision to Article 8 (Alternative B) of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2024/CRP.12), (2) *The treatment of income from cross-border insurance activities* (E/C.18/2024/CRP.13); and (3) *The treatment of income arising from extractives and other natural resources* (E/C.18/2024/CRP.14). The first two papers include specific questions for the Committee's consideration while the paper on natural resources is presented for general discussion and guidance.