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

Geneva, 15-18 October 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-ninth Session. It describes the Subcommittee's activities since the Twenty-eighth Session. The substantive work of the Subcommittee is presented in separate documents: (1) *Proposal for revisions to Article 8 of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2024/CRP.29); (2) *Technical issues arising under Article 6* (E/C.18/2024/CRP.30); (3) *The treatment of income arising from extractives and other natural resources* (E/C.18/2024/CRP.31); and (4) *The treatment of income from cross-border insurance activities* (E/C.18/2024/CRP.32). The paper on Article 6 is presented for a **first discussion** while the others are for **discussion and approval**.

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 virtual meetings from 4-6 June and 5-6 September 2024. It also held a joint meeting with the Subcommittee on the Digitalized and Globalized Economy from 8-12 July 2024 in Amsterdam.

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

(1) International Transport

6. Since the Subcommittee's work program was approved at the Twenty-fourth Session, this topic was expanded to look at international transport more generally. At its meeting in Amsterdam, the Subcommittee considered the outcomes of the previous discussions in the Committee and input received afterwards. It decided to propose that the new provision allowing source taxation of income from international traffic will cover both shipping and international air transport and be the first alternative under Article 8. The article will continue to include an alternative providing for exclusive residence State taxation of both shipping and international air transport. This proposal is presented to the Committee in E/C.18/2024/CRP.29, which is presented to the Committee for *discussion and approval*.

(2) Income derived from Cross-Border Insurance Activities

7. For the Twenty-eighth Session of the Committee the Subcommittee prepared note [E/C.18/2024/CRP.13](#), which proposed a new Article 12C with its draft Commentary, for the consideration of the Committee.

8. The report of the Twenty-eighth Session describes the discussion as follows:

20. Mr. Protto presented a note on the treatment of income from cross-border insurance activities (E/C.18/2024/CRP.13). The note set out the Subcommittee's proposal to delete paragraph 6 of article 5, under which a permanent establishment was deemed to exist where an insurance enterprise of a State collected premiums from, or insured risks in, the other Contracting State, and, in response to comments at the twenty-seventh session, to introduce a new stand-alone article 12C, which would allow taxation of the relevant premiums on a gross basis.

21. There was general, but not unanimous, support in the Committee for inclusion of such a new article. The discussion then moved on to questions regarding the scope of the proposed article, including the definition of insurance. In particular, some observers from the business sector pointed out that many insurance contracts were essentially savings products, so that a gross-basis withholding tax on the premiums would effectively be a tax on the investment, not on income.

22. The Subcommittee had also asked for input regarding how the beneficial owner concept should be applied in the case of reinsurance contracts. Observers from the business sector noted that the manner in which the reinsurance market distributed risk, which was adverted to in the note, would render it very difficult to trace reinsurance premiums through various reinsurance arrangements. One observer suggested that a source rule regarding the location of risk, currently included in the draft commentary, should be included in the text of article 12C, in response to which an observer from the business sector remarked that it was very difficult to determine the location of risk. Several observers from the business sector undertook to submit written comments from their organizations before 15 April 2024, the general deadline for comments on Committee papers.

9. The Subcommittee has now prepared a revised version of the proposed article and its Commentary that provides additional guidance regarding the definition of insurance premiums and the

source of premium income. The Committee received several technical comments at and after the Committee Session and also has revised the article and Commentary to address them. The new proposal (E/C.18/2024/CRP.32) is presented to the Committee for **discussion and approval** at its Twenty-ninth Session.

(3) Extractives and Other Natural Resources

10. At the Twenty-eighth Session of the Committee, the Subcommittee presented note [E/C.18/2024/CRP.14](#), which proposes a new Article 5A with its draft Commentary, for first consideration by the Committee. This note was prepared with the input of the Subcommittee on Extractives.

11. The Committee's positive reaction to the proposal is described in this excerpt from the report of its Twenty-eighth Session:

13. [Mr. Protto] then presented a note on the treatment of income arising from extractives and other natural resources (E/C.18/2024/CRP.14), which included a proposed new article 5A and draft commentary establishing lower thresholds for source State taxation relating to certain natural resource activities. He acknowledged the benefit of close coordination with the Extractives Subcommittee as that provision was being developed.

14. There was general support for the proposed provision, although one observer State suggested that the provision should be included as an alternative in the commentary rather than in the text of the Model Convention, as it might not be applicable to all developing countries. The same observer indicated a preference for limiting the provision to specialized services, rather than applying it to all services that supported natural resource activities. It was noted that that view had already been addressed in the commentary.

15. Another observer suggested that several provisions that were included in the commentary as alternative provisions, because they had not received sufficient support from participants in the Subcommittee, should form part of the text of the Model Convention. Members and observers also made a number of technical comments with regard to the proposed provision, many of which had already been discussed by the Subcommittee. It was agreed that the Subcommittee would consider the comments and make any appropriate modifications before the twenty-ninth session of the Committee.

12. The Subcommittee considered comments made at the Twenty-eighth Session and several written comments received afterwards. It now presents a revised text of Article 5A and Commentary, in E/C.18/2024/CRP.31, for the Committee's **discussion and approval**.

(4) Technical issues under Article 6

13. At the first meeting of the Subcommittee in January 2022, participants raised technical issues with respect to both the definition of immovable property and with the allocation rule found in Article 6. The Subcommittee has now drafted proposed changes to the UN Model text and its Commentaries,

contained in E/C.18/2024/30 to deal with these technical issues. The Committee is invited to have a *first discussion* of these issues.

(5) The Treatment of Services, Including Issues of Overlap

14. 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.

15. 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.22). Accordingly, the Subcommittee has stopped working on this issue until the Committee has reached a decision on Article xx. As noted above, the Subcommittee held a joint meeting with the Subcommittee on the Digitalized and Globalized Economy to discuss these issues so that it is prepared to make any consequential changes to the Commentaries to reflect decisions made by the Committee with respect to Article xx.

(6) Other Issues

16. The Subcommittee has also considered a technical issue regarding a possible conflict between Article 21(3) and Article 18 (Alternative B), as revised in 2021. After discussions in several Subcommittee meetings, it became clear that there is no conflict. However, the discussions raised additional questions, as did a 2023 conference focused on issues arising under Article 21. The Subcommittee therefore decided that the topic was more complicated than initially thought and could not be dealt with during this membership of the Committee. It recommends including this on the list of Model issues that could be addressed in the future.

III. The UN Model and the Sustainable Development Goals

17. 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, promotes 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

18. As noted above, three notes are submitted for the Committee's *discussion and approval*:

(1) *Proposal for revisions to Article 8 of the United Nations Model Double Taxation Convention between Developed and Developing Countries* (E/C.18/2024/CRP.29);

(2) *The treatment of income arising from extractives and other natural resources* (E/C.18/2024/CRP.31); and

(3) *The treatment of income from cross-border insurance activities* (E/C.18/2024/CRP.32).

19. One note, *Technical issues arising under Article 6* (E/C.18/2024/CRP.30), is submitted for *first discussion* by the Committee, with a view to approval at the Thirtieth Session.