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**Committee of Experts on International
Cooperation in Tax Matters
Thirtieth session**

New York, 24-27 March 2025

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 describes the Subcommittee's activities since the Twenty-ninth 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 – Technical Issues* (E/C.18/2025/CRP.18); (2) *The treatment of income from cross-border insurance activities* (E/C.18/2025/CRP.19) and (3) *Technical issues arising under Article 6* (E/C.18/2025/CRP.20). These papers are presented for ***discussion and final approval***.

A technical issue was raised by a Member State at the Twenty-ninth Session on *The treatment of income arising from extractives and other natural resources* (E/C.18/2024/CRP.31). That issue is addressed at paragraphs 14 to 16 of this paper. The Committee is requested to ***approve*** the drafting change to the Commentary on new Article 5A that is proposed by the Subcommittee in response to the Member State's concern.

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](#)).

4. At its Twenty-ninth Session, the Committee approved the approaches of: (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](#)), subject to certain technical revisions. These are discussed below.

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

5. The Subcommittee has held two virtual meetings since the Twenty-ninth Session, on 13-14 November 2024 and 10 and 14 February 2025.

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

(1) International Transport

7. At the Twenty-ninth Session, the Subcommittee proposed 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 was presented to the Committee in E/C.18/2024/CRP.29.

8. The report of the Twenty-ninth Session describes the discussion of this topic as follows:

18. The Committee continued its discussion of a proposal for revisions to article 8 of the Model Convention (E/C.18/2024/CRP.29). Mr. Das explained that the Subcommittee proposed maintaining two alternatives in the Model Convention, one being an option for shared taxing rights over income from international traffic and the other providing for exclusive residence State taxation. Many Committee members expressed support for the provision of such options, given the strong views on both sides expressed at earlier Committee sessions. A number of members also expressed the view that international air transport should not be included in the rule allowing for shared taxing rights and they therefore would be aligning with the minority position set out in the proposed commentary. That position regarding international air transport was shared by some Member State observers and other observers.

19. The Committee approved the approach set out in the note. However, the Subcommittee was asked to clarify the commentary and the text of article 8 (alternative A), if necessary, regarding (a) the treatment of journeys by air that involved multiple legs; (b) a circularity issue regarding the interaction of the definition in paragraph 3 and article xx; and (c) and the implications of including subparagraph 2 (a) if one or both parties to a bilateral convention did not tax on a net basis.

9. The issues described in paragraph 19 of the report of the Twenty-ninth Session, as well as two other technical issues that arose during the Subcommittee's discussions, are addressed in *Proposal for revisions to Article 8 of the United Nations Model Double Taxation Convention between Developed and Developing Countries – Technical Issues* (E/C.18/2025/CRP.18). The Committee is now requested to **approve** the changes to Article 8 (Alternative A) and the Commentary to address the issues raised during the Twenty-ninth Session and the two technical issues.

(2) Income derived from Cross-Border Insurance Activities

10. 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. At the Twenty-ninth Session, the Committee considered a revision of that note (E/C.18/2024/CRP.32), which addressed comments made at and after the Committee Session.

11. The report of the Twenty-ninth Session describes the discussion of this issue as follows:

16. Mr. Protto next presented a note on the treatment of income from cross-border insurance activities (E/C.18/2024/CRP.32) for discussion and final approval. At the twenty-eighth session, the Subcommittee had proposed a new article 12C to replace existing article 5 (6), which deemed a permanent establishment to exist as a result of certain insurance activities. The new article 12C would allow taxation of insurance premiums on a gross basis. At the twenty-eighth session, observers had made a number of technical comments regarding (a) the application of the beneficial ownership rule in the case of reinsurance; (b) the scope of the article; and (c) the proposed alternative source rule based on location of risk. The text of the proposed article had been modified and additional guidance had been added to the proposed commentary to address those technical concerns.

17. Observers raised primarily technical issues, this time focused on new commentary regarding the application of the beneficial ownership rule in the case of fronting companies and the location of risk. The Committee approved the text of article 12C, subject to clarification of the commentary on the technical issues raised during the Committee session.

12. The Subcommittee has now modified the proposed Commentary to address the issues raised at and after the Committee Session. The new proposal (E/C.18/2025/CRP.19) is presented to the Committee for *discussion and approval* at its Thirtieth Session.

(3) Extractives and Other Natural Resources

13. 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. That note was prepared with the input of the Subcommittee on Extractives. At the Twenty-ninth Session, the Committee considered note E/C.18/2024/CRP.31, which addressed some relatively minor issues that had been raised at the Twenty-eighth Session. The Committee approved new article 5A and its commentary, subject to minor editorial changes.

14. At the Twenty-ninth Session of the Committee, a Member State Observer suggested that referring to “presence” instead of “exercised” or “performed” would be more consistent with Art. 15(2)(a). He suggested that such an approach would avoid some litigation risks regarding “rotational schedules” (e.g., 4 weeks on and 4 weeks (paid) off) that are common in their offshore sector.

15. The Subcommittee agreed that the operation of the alternative paragraph would be clearer if the language were closer to that of Article 15(2)(a) as there is guidance under that provision on the meaning of “presence”. It therefore is proposed that this section of the Commentary would read:

6. Some countries also wish to tax employment income derived in connection with relevant activities, even if the employer does not have a permanent establishment in that State. Those countries could do so by including the following additional paragraph in Article 5A:

Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State and connected with relevant activities in the other Contracting State may be taxed in that other State if the resident is present in that other State for a period or periods exceeding in the aggregate 30 days in any twelve-month period commencing or ending in the fiscal year concerned.

Terms used in this alternative provision should be interpreted consistently with paragraph 3 of the Commentary on Article 15 of this Model, quoting paragraphs 4 to 5.1 of the Commentary on Article 15 of the 2017 OECD Model. In particular, the 30-day requirement applies to the term “is present”, not the word “exercised”. That is, once the resident has been present for more than 30 days in the State in which relevant activities are conducted that resident may be taxed in that State, even if those 30 days include only a few days in which the resident exercises the relevant employment and the rest of the days constitute leisure or sick days, for example.

7. If this alternative provision is included in a bilateral tax treaty, paragraph 1 should read as follows:

The provisions of this Article shall apply notwithstanding the provisions of Articles 5, 8 and 15 of this Convention.

16. The Committee is now asked to **approve** the Subcommittee's proposal for responding to the Member State Observer's suggestion.

(4) Technical issues under Article 6

17. 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. At the Twenty-ninth Session, the Committee considered 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 had a **first discussion** of these issues. The report of the Twenty-ninth Session describes the discussion of this issue as follows:

14. Ms. Smith then presented a note on technical issues arising under article 6 (E/C.18/2024/CRP.30) for first discussion. The note included proposed changes to the text of article 6 of the Model Convention and to its commentary to address technical issues relating to the definition of immovable property and the effect on residence State taxation of the allocation rule of article 6. There were no comments on the clarification provided regarding the second issue, which simply stated that taxation by the situs State did not prevent taxation by the residence State.

15. With respect to the proposed change to the definition and the commentary, while some Committee members and Member State observers expressed support for the change, some questions were raised about whether the explanation in the proposed commentary could require an historical approach to interpreting the provision, rather than an ambulatory approach. It was also questioned whether a reference to context would be helpful in that case, and it was noted that the proposed change to the definition could raise uncertainty even in cases where there was no current uncertainty. It was agreed that the Subcommittee would review the drafting, and the possible relevance of the Vienna Convention on the Law of Treaties, to ensure that the proposed change to the definition and the explanation in the commentary supported the desired result.

18. The Subcommittee has revised its proposal with respect to the definitional issue, so that only the Commentary on Article 6 would be changed, not the text of the Article itself. This revised proposal is presented in E/C.18/2025/CRP.20. The Committee is asked to **approve** the proposed changes to the Commentary to address both issues.

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

19. 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.

20. Since the Twenty-seventh Session, this work has been folded into the work on Article XX would replace Article 14. The Subcommittee has worked closely with the Subcommittee on the Digitalized and Globalized Economy to address coordination issues between Article XX and the other provisions to the UN Model, both existing and adopted during this membership of the Committee.

(6) Other Issues

21. 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.

IV. Proposals for Further work

22. During the Subcommittee's discussions, various technical issues have arisen that could not be addressed during this membership but that the Subcommittee considers could be important for developing countries and therefore should be brought to the attention of the next membership of the Committee. These include:

- The taxation of a permanent establishment under Articles 7 and 24;
- How source rules based on place of payment should be applied when an agent or other person makes a payment on behalf of the person bearing the economic burden of the payment;
- The definition of "income from immovable property", including in the case of mineral royalties;
- Whether certain aspects of the Commentary should be revisited in light of the adoption of the "subject to tax rule" in new paragraph 3 of Article 1; and
- Article 21, including its scope and source rules.

V. Issues for the Committee

23. 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 – Technical Issues* (E/C.18/2025/CRP.18);
- (2) *The treatment of income from cross-border insurance activities* (E/C.18/2025/CRP.19) and
- (3) *Technical issues arising under Article 6* (E/C.18/2025/CRP.20)

24. The Subcommittee also asks for *approval* of the drafting change set out in paragraph 15 of this note.