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Committee of Experts on International Cooperation in Tax Matters

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Item 3(j) of the provisional agenda

Taxation of Crypto-assets

Report from the Ad Hoc Group

Summary

Since the Twenty-sixth Session, an ad hoc group on the taxation of crypto-assets has been developing a draft Toolkit to support countries in identifying risks arising from crypto-assets in their domestic tax system. The Toolkit considers three main categories of crypto tax risks: (1) crypto reporting and tax crimes; (2) crypto losses and deductions; and (3) crypto functional substitutes risks. It consists of an introductory section, a guide on its application, and a set of questionnaires with accompanying commentaries to facilitate a thorough assessment of these risks.

During the Twenty-ninth Session, the Committee approved the first part of the Toolkit addressing the first two crypto-tax risks –crypto reporting and tax crimes as well as crypto losses and deductions (pp. 6 – 67).

The ad hoc group provides a progress report on the work undertaken since the Twenty-ninth Session and ***presents for approval*** the section covering the third category of crypto-tax risks – crypto functional substitutes risks (pp. 68 – 122 of the Appendix).

Background information

1. At its Twenty-third Session, the Committee of Experts on International Cooperation in Tax Matters (the Committee) recognized the importance of crypto-assets for developing countries and requested a detailed analysis of the issues and challenges they present, outlining potential courses of action. In response, the Secretariat prepared a paper and a report (E/C.18/2023/CRP.9) presented at the Twenty-sixth Session analyzing the key risks and proposing two possible approaches for the Committee's consideration: a Toolkit for the Evaluation and Mitigation of Tax Risks or a Model Guidance to be used by tax authorities. The Committee decided to form an ad hoc group of five Committee members to collaborate with the Secretariat to suggest how to take the work on the taxation of crypto-assets forward.
2. The ad hoc group opted to develop a Toolkit to evaluate crypto-assets tax risk and, at the Twenty-seventh Session, presented a report containing an outline of the Toolkit (E/C.18/2023/CRP.28). The ad hoc group also proposed a phased approach which was endorsed by the Committee: the first part of the Toolkit would be presented for first consideration at the Twenty-eighth Session and the second part at the Twenty-ninth Session, with the goal of having the two parts reviewed and approved at the Twenty-ninth and Thirtieth Sessions, respectively. During the Twenty-eighth Session, the initial part of the Toolkit, covering crypto reporting and tax crimes, as well as crypto losses and deductions, was presented for first consideration, and the Committee provided feedback for refinement.
3. At the Twenty-ninth Session, the Committee approved the first part of the Toolkit and provided additional guidance for finalizing the remaining section on crypto functional substitutes risks. In line with the agreed timeline, the ad hoc group now presents for approval this final section, contained in pages 68 to 122 of the Appendix.

Sustainable Development Goals

4. At its Twenty-third Session, the Committee agreed to discuss taxation and the Sustainable Development Goals (SDGs) as a reoccurring topic during its sessions. It also agreed that Subcommittees should reflect on the links between their work and the SDGs. The work on the taxation of crypto-assets is especially relevant in this regard as the ad hoc group provides guidance that can aid countries in safeguarding tax revenues and, in light of rising adoption rates of crypto-assets, future-proof their tax systems.

Progress Report

5. Since the Twenty-ninth Session, the ad hoc group has incorporated the feedback provided by the Committee and observers during and after the Session. The second part of the Toolkit was thus improved and finalized. Additionally, minor editorial revisions have been made to the first part of the Toolkit, already approved by the Committee, to improve clarity and consistency across the document. The ad hoc group is presenting for approval the second part of the Toolkit covering the third category of crypto-tax risks – crypto-functional substitutes risk (i.e. where crypto transactions act as 'functional substitutes' for traditional transactions but because tax laws weren't drafted with crypto-assets in mind, there are opportunities for tax arbitrage), contained in pages 68 to 122 of the Appendix.

Second part of the ‘Toolkit for the Evaluation of Crypto Tax Risks’ for approval

6. Since its initial presentation during the Twenty-ninth Session, this second part of the Toolkit has been revised in response to comments received during and after that session, as well as recent developments in the crypto landscape. These updates include refinements in specific sections to improve clarity (such as replacing the term “wages” with “remuneration”), adjustments in response to technical comments (such as distinguishing between situations where a crypto-asset itself represents a debt instrument versus situations where the lending of crypto-assets is considered a debt instrument), adding further details (such as noting thresholds for reporting requirements) and editorial revisions to ensure consistency.

7. The second part of the Toolkit consists of *Questionnaires* designed to help users systematically evaluate crypto functional substitutes risks either through a comprehensive assessment or by focusing on specific sub-risks. Some sub-risks share common issues and thus, there may be ‘Preliminary Questions’ that apply to a group of sub-risks. The *Commentaries* complement the questionnaires by providing contextual information and background, explaining the rationale behind each question to support a thorough understanding and practical application of the Toolkit.

Actions sought from the Committee

8. The ad hoc group is hereby providing a short progress report on the work undertaken since the Twenty-ninth Session and is presenting *for approval* the second part of the Toolkit covering the third crypto tax risk (crypto functional substitutes risks, pp. 68 – 122 in the Appendix).