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Proposed workstream for the work on the UN Manual for the Negotiation of Bilateral Tax Treaties

Summary

This note outlines options for the proposed workstream.

The Economic and Social Council's mandate to the Committee of Experts requires it to "keep under review and update as necessary" the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (the Manual).

The Committee approved the current Manual in 2023, reflecting the 2021 UN Model.

The Committee's primary task is to decide whether to update the Manual during this membership term and, if so, what scope the update should take. This note summarizes issues raised by the previous Committee membership, Member States, and other stakeholders and it presents two options for consideration.

The Committee is further asked to decide whether to establish a subcommittee to undertake this work and to provide guidance on priorities among the various issues.

I. Brief description

1. This workstream proposes an update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (the Manual) to align with changes made to the United Nations Model Tax Convention in 2025. Key changes include the introduction of Articles 5A (Income from the exploration for, or exploitation of, natural resources), 12AA (Fees for services) and 12C (Insurance premiums) and the deletion of Articles 12A (Fees for technical services) and 14 (Independent personal services). The update will also address evolving issues on source taxation rights and the realities of an increasingly digitalized economy that demands less physical presence.

II. Source of the proposal/demand from developing countries

2. The proposal to update the Manual originates directly from the Committee's mandate, as set out in the Economic and Social Council resolution 2004/69 of 11 November 2004, to "keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries."

3. The 2021-2025 Committee membership of the Committee approved the current Manual in 2023, reflecting the 2021 UN Model, including Article 12B (Income from automated digital services) and the relevant UN Commentaries and guidance on conducting negotiations by videoconference. That membership subsequently approved in the 2025 UN Model at its Thirtieth Session (March 2025), incorporating substantial changes not yet reflected in the Manual. The Committee also approved shortening the title of the UN Model but left any title change of the Manual for the incoming membership to consider.

4. The Co-Coordinators of the Subcommittee on the Update of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (the Subcommittee) noted in reports from the Twenty-seventh to the Thirtieth Sessions that a planned meeting to address 2021-2025 UN Model changes had not been possible. Members agreed that the update should be deferred to the next membership, given the volume of pending decisions, while several expressed willingness to support the process even if no longer serving.

- Changes to the UN Model 2021not incorporated in the Manuel comprise: Introduction of a New "Subject-to-Tax" Rule (Article 1, paragraph 3) to the UN Model that denies treaty benefits for income that is subject to no or very low tax in the residence country. This protects source countries' taxing rights when income is not meaningfully taxed elsewhere. The rule applies broadly to any type of income, not just payments between related parties. It focuses on low statutory tax rates or special exemptions that effectively lower tax below a bilaterally-agreed minimum rate, to prevent tax avoidance strategies.
- New Article 5A Establishes Tax Rights Based on Natural Resource Activities. The proposed Article 5A introduces specific rules to ensure that a source country can tax income from the exploration or exploitation of natural resources — both renewable and

non-renewable — if such activities exceed 30 days in a 12-month period. This applies even if a permanent establishment doesn't exist under other treaty articles. The provision covers all related activities, including extraction, processing, transport, storage, decommissioning, and site rehabilitation. It applies not only to highly specialized contractors (e.g., drillers) but also to general service providers (e.g., catering staff at a mine), as long as services are connected to natural resource activities.

- New Article 12C for Insurance Premiums. The UN proposes replacing paragraph 6 of Article 5 (which previously created a deemed permanent establishment for insurance activities) with a new Article 12C, allowing source countries to tax insurance and reinsurance premiums on a gross basis, regardless of whether a permanent establishment exists. Article 12C covers both direct insurance and reinsurance premiums but includes rules to exclude savings-like insurance products from scope and to ensure that fronting arrangements do not claim inappropriate tax benefits. The tax rate is to be set by bilateral negotiation.

- New Article 12AA Introduced to Replace Articles 12A and 14. A consolidated Article 12AA is introduced to replace previous Articles 12A and 14, allowing source countries to tax cross-border service fees even without a permanent establishment or physical presence. This simplifies treaty rules and allows for expanded taxing rights in the context of a digitalized economy and makes the treaty rules more consistent.

5. The Manual is explicitly referenced in the mandate of the Committee and was included in the Thirtieth Session's for the 2025-2029 Committee membership to carry forward. Feedback from both developed and developing countries gleaned through capacity-building activities emphasized the importance of keeping the Manual current and practical. The Manual is widely used in national, regional, and global training programmes, making its continued relevance directly linked to country demand.

III. Prior UNTC work and identified gaps.

6. The Manual, first published in 1978, has been revised periodically, in 2003, 2015, 2019, and 2023. From 2005 to 2011, the work was undertaken by the first Subcommittee on a Manual for the Negotiation of Tax Treaties. In 2013, the Committee established the Subcommittee on Negotiation of Tax Treaties – Practical Issues. Its 2015 revision of the Manual, approved at the 10th session of the Committee, was based on the following principles:

- That it be a compact practical training tool for beginners or tax officials with limited experience and reflect the realities for developing countries at their relevant stages of capacity development;
- That it reflect the current version of the UN Model and the relevant Commentaries thereon, as well as ongoing decisions of the Committee leading to changes therein; and
- That it draw upon the previous work done by the Committee and any other relevant inputs, as well as work being done in other fora.

7. At its Fifteenth Session, the Committee decided that an additional revision was necessary in order to reflect the substantial changes adopted in the UN Model approved at the Fourteenth Session of the Committee and published in 2017. The Subcommittee on Tax Treaty Negotiation was given the following mandate:

8. The Subcommittee is mandated to propose updates to the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, based on the following principles:

- That it reflects the current version of the UN Model Double Taxation Convention between Developed and Developing Countries and the relevant UN Commentaries as well as ongoing decisions of the Committee leading to changes in them; - That it pays special attention to the experience of developing countries and reflects their realities and needs at their relevant stages of capacity development;
- That it draws upon and feeds into, as appropriate, the relevant work done in other fora, especially the work on the toolkit on tax treaty negotiation by the Platform for Collaboration on Tax.

The aim of the Subcommittee shall be to present to the Committee an update of the Manual for consideration with a view to adoption in 2019. Updates on the progress of the work shall be provided to the Committee at each preceding session. The Subcommittee may request the secretariat to develop necessary inputs and provide necessary support within its resources.

9. The work was completed according to schedule and an update of the Manual reflecting the 2017 UN Model was published in 2019.

10. Following substantial 2021 Model changes (notably Article 12B on automated digital services), a dedicated Subcommittee was established to assist the Committee in preparing the 2023 update. The same Subcommittee also supported the Committee in developing guidance on conducting negotiations by videoconference.

11. Several gaps remain. The Manual does not yet fully address practical challenges faced by negotiators from developing countries. Other logistical aspects, such as exploratory talks or hybrid negotiation formats, remain underdeveloped. Treaty negotiators have also emphasized the need for clearer practical tools, including visual guides such as negotiation timelines or decision trees. Developing country negotiators particularly need detailed guidance on priorities and trade-offs when negotiating the new services provisions in the 2025 UN Model.

12. In addition, guidance on treaty provisions including in a number of tax treaties where developing countries face particular challenges, including most-favoured-nation clauses, collective investment vehicles, pension funds, real estate investment trusts, and offshore indirect transfers, have not yet integrated in the Manual although these appear in the 2021 UN Model, their practical negotiation implications have not been systematically addressed representing additional challenges for tax officials.

IV. Proposed UNTC outputs

13. The Committee has to decide whether to update the Manual during this membership term and, if so, what scope the update should take.

14. This note presents two options for consideration:

15. Option A – Essential Update. This option would align the Manual with the 2025 UN Model by:

- incorporating guidance on new Articles 5A (natural resources income), 12AA (services), and 12C (insurance premiums)
- removing outdated references to deleted Articles 12A and 14
- updating all cross-references, examples, and terminology throughout the Manual to reflect 2025 Model provisions
- ensuring consistency with the 2025 Commentary

This would ensure the Manual remains consistent with current treaty standards and immediately usable for negotiators working with the 2025 Model. This option is achievable within 18-24 months.

16. Option B – Comprehensive Update. This option would include all Option A changes plus expanded guidance on practical negotiation challenges:

- Exploratory talks and hybrid negotiation formats (building on existing videoconference guidance)
- Drafting and risks of most-favoured-nation clauses
- Bulk negotiations involving multiple partners
- Treatment of collective investment vehicles, pension funds, real estate investment trusts, and offshore indirect transfers
- Visual tools (timelines, flowcharts, decision trees) to improve accessibility for officials with limited experience
- Updated Manual title to align with the name change of the 2025 Model.

This option would require 24-36 months. The primary audience for Option A and Option B is the same—treaty negotiators, government officials, and capacity-building trainers. Option B would bring enhanced value for less experienced negotiators and administrations with limited resources.

17. Under either option, the updated Manual will remain a user-friendly training tool that contributes to capacity development, domestic resource mobilization, and achievement of the Sustainable Development Goals.

V. Relationship to other work

18. The update of the Manual is closely linked to other workstreams of the Committee. Most directly, it complements the periodic revision of the UN Model. Ensuring consistency between the Manual and the UN Model is central to the Committee's mandate, particularly following the deletion of Articles 12A and 14 and the introduction of new Articles 5A, 12AA and 12C, alongside other substantive changes adopted at the Twenty-ninth and Thirtieth Sessions.

19. The Manual also underpins the Toolkit on Tax Treaty Negotiations (the Toolkit) prepared by the Platform for Collaboration on Tax (IMF, OECD, UN, and World Bank). The Toolkit, published in 2021 provide tax officials who have little or no experience in tax treaty negotiation with the tools they need to implement some of the guidance in the UN Manual Ensuring coherence between the Manual and the Toolkit is essential to avoid duplication, maintain credibility, and maximize their effectiveness in supporting capacity development.

20. Beyond these technical linkages, the Manual contributes to the United Nations' broader financing for development agenda. The Addis Ababa Action Agenda affirms that "domestic public resources, supported by effective tax systems and revenue administration, are critical to financing sustainable development." The Manual directly supports SDG Target 17.1, which calls for strengthening developing countries' capacity for revenue mobilization and contributes to international tax cooperation as part of SDG 17.

VI. Committee decision factors

21. This workstream falls squarely within the Committee's mandate to "provide practical guidance on international tax cooperation matters, with particular attention to the needs of developing countries." By ensuring that the Manual remains aligned with the latest UN Model and addresses practical negotiation challenges, the Committee will continue to equip developing countries to negotiate balanced treaties. The update provides an opportunity for Committee leadership by producing a unique, user-friendly instrument tailored to developing countries' realities, reinforcing the Committee's distinctive value in global standard-setting.

22. For countries, the updated Manual will deliver direct and implementable value: it will provide step-by-step negotiation guidance, integrate digital and hybrid negotiation practices, and include practical tools such as timelines and decision trees. Feedback from treaty negotiators has emphasized the demand for clearer and more accessible material to support administrations with limited resources. While primarily designed for developing countries, the Manual will also benefit developed country negotiators and the private sector by promoting consistency, transparency, and predictability in treaty practice.

23. The workstream relies on the Committee's existing treaty expertise, complemented by external experts where needed for specialized topics, such as automated digital services or offshore indirect transfers. It builds on established workstreams, allowing efficient use of Committee time and resources.

VII. Summary of the options for Committee considerations

24. The Committee is asked to:

a. Decide whether to update the Manual during the 2025-2029 term, recognizing that alignment with the 2025 Model is necessary for the Manual to remain a relevant training tool.

b. Select the scope of the update:
Option A: align with all the 2025 UN Model changes (approx. 18-24 months).
Option B: Model alignment plus expanded practical guidance and visual tools (approx. 24-26 months).

c. Decide whether to establish a subcommittee to undertake this work, following the structure that proved effective for previous Manual updates.

d. Consider whether to update the Manual's title to align with the 2025 Model's name change.