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

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Item 5 (a) of the provisional agenda

**United Nations Model Tax Convention Update**

**SECRETARIAT NOTE ON PROPOSED UPDATE OF  
UNITED NATIONS MODEL TAX CONVENTION**

***Summary***

This note has been prepared by the Secretariat as a possible updated Introduction of the United Nations Model double Tax Convention. It should not necessarily be taken as reflecting the final views of the Secretariat, but is intended merely to facilitate discussion at the 2011 annual session.

## INTRODUCTION

### A. ORIGIN OF THE UNITED NATIONS MODEL CONVENTION

1. The United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention) forms part of the continuing international efforts aimed at eliminating double taxation. These efforts were begun by the League of Nations and pursued in the Organisation for European Economic Cooperation (OEEC) (now known as the Organisation for Economic Co-operation and Development (OECD)) and in regional forums, as well as in the United Nations, and have in general found concrete expression in a series of model or draft model bilateral tax conventions.
2. These Models, particularly the United Nations and OECD Models, have had a profound influence on international treaty practice, and have significant common provisions. The similarities between these two leading Models reflect the importance of achieving consistency where possible while the important areas of divergence exemplify, and allow a close focus upon, some key differences in approach or emphasis as exemplified in state practice. Such differences relate, in particular, to the issue of how far one country or the other should forego, under a bilateral tax treaty, taxing rights which would be available to it under domestic law, with a view to avoiding double taxation and encouraging investment.
3. The United Nations Model Convention generally favours retention of so called “source State” taxing rights under a tax treaty – the taxation rights of the host state of investment - as compared to those of the residence State of the investor. This has long been regarded as an issue of special significance to developing countries, although it is something that some developed countries seek in their bilateral treaties also.
4. The desirability of promoting greater inflows of foreign investment to developing countries on conditions which are politically acceptable as well as economically and socially beneficial has been frequently affirmed in resolutions of the General Assembly and the Economic and Social Council of the United Nations and the United Nations Conference on Trade and Development. The 2002 Monterrey Consensus on Financing for Development<sup>1</sup> and the follow up Doha Declaration on Financing for Development of 2008<sup>2</sup> together recognize the special importance of international tax cooperation in encouraging investment for development and maximizing domestic resource mobilization, including by combating tax evasion. They also recognize the importance of supporting national efforts in these areas by strengthening technical assistance (in which this Model will play a vital part) and enhancing international cooperation and participation in addressing international tax matters (of which this Model is one of the fruits).
5. The growth of investment flows between countries depends to a large extent on the prevailing investment climate. The prevention or elimination of international double taxation in respect of the same income—the effects of which are harmful to the exchange of goods and services and to the

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<sup>1</sup> United Nations 2002, A/CONF.198/11

<sup>2</sup> United Nations 2008, A/CONF.212/L.1/Rev.1

movement of capital and persons, constitutes a significant component of such a climate.

6. Broadly, the general objectives of bilateral tax treaties therefore include the protection of taxpayers against double taxation with a view to improving the flow of international trade and investment and the transfer of technology. They al

## B. SPECIAL CHARACTERISTICS OF THE UNITED NATIONS MODEL

11. The United Nations Model Convention represents a compromise between the source principle and the residence principle, although as noted above, it gives more weight to the source principle than does the OECD Model Convention. It aims not to be prescriptive, but to equip decision-makers in countries with the information they need to understand the consequences of these differing approaches for that country's specific situation. As noted in the previous version of the Model, the provisions of the Model Convention are not themselves enforceable. Its provisions are not binding and should not be construed as formal

16. The main objectives of this revision of the United Nations Model Convention were to take account of developments in the area of international tax policies relevant for developing and developed countries. The Committee also identified treaty policy issues that require further work and it mandated one Subcommittee to address the issue of the taxation treatment of services in general and in a broad way including all related aspects and issues. Furthermore, the issue of taxation of fees for technical services should also be addressed. Many source states, particularly certain developing countries, have found that the lost revenue opportunity, which can be considerable when dealing with the service industry, can be reduced by including a right to tax technical services in the tax treaty either in a separate article or including technical services in the definition of royalties. It was recognized that this was the initiation of some extensive work and it was agreed that there would not be any results ready for incorporation into this version of the Model Convention. In the future, if the Committee so decides, any potential conclusions that could be useful may therefore be presented as a Committee Report which may shape the next revision of the United Nations Model Convention.

### C. MAIN FEATURES OF THE CURRENT VERSION OF THE MODEL

[This is subject, especially for the Commentaries, to decisions taken at the 2011 Annual Session]

17. The main differences between this version of the Model and the previous version published in 2001 are as follows:

- Ø A modified version of Article 13(5) to address possible tax evasion;
- Ø A modification of the note to Article 13(5) in this version.

Report on the Attribution of Profits to Permanent Establishments) is not adopted in relation to the differing United Nations Model Convention Article (paragraph 1) ;

Ø Incorporation of newer text on beneficial ownership drawn from the OECD Model Tax Convention in the Commentaries on Article 10 (paragraph 13) Article 11( paragraph 18);

and

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