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

Geneva, 17-20 October 2017

Item 5 (a) of the provisional agenda*

Procedural issues for the Committee

Secretariat note:

This note is an update to the note produced by the secretariat for the fourteenth session of the Committee in April 2017 ([E/C.18/2017/CRP.11](#)) in response to the request from the Committee at its thirteenth session for a short secretariat note on some procedural issues.

The note draws upon the experience of the Committee so far, as that may help inform consideration of such issues by the current Membership of the Committee. The issue was briefly discussed during the fourteenth session and this new version takes into account comments and suggestions received during that session.

The paper is not intended to be exhaustive of possible matters for consideration and views represented are by no means intended to be exhaustive of views on the issues addressed.

* E/C.18/2017/1

PROCEDURAL ISSUES FOR COMMITTEE CONSIDERATION

Introduction – Purpose of this Note

In its Report on the Twelfth and Thirteenth Sessions, the Committee of Experts on International Cooperation in Tax Matters (the Committee) noted that in the thirteenth session:¹

27. The broader issue arose as to whether Committee Members should include minority views corresponding to the views expressed by their countries in relation to the OECD Model Convention (observations, reservations or positions). The secretariat was requested to prepare a short paper on the options for dealing with minority views, for the Committee's consideration at its fourteenth session, under an agenda item addressing "Other matters for consideration, including suggestions for Committee procedures and future Committee work". It was decided not to "date stamp" minority views as having been expressed at a particular session, at this stage.

28. On another related issue, it was decided that, for the purposes of the membership of the Committee at the time of the session, members not physically present would not be allowed to vote, though they could present their views for consideration. The secretariat was asked to address the issue in the paper on procedural issues and to record therein the discussions on the issue to date. The matter was not expected to be discussed further at the fourteenth session, but such a paper might be useful for the next membership of the Committee should it wish to reconsider the issues at the fifteenth session or on any subsequent occasion.

2. This note summarises some of the background and previous discussion on these and other procedural issues. The fourteenth session recognized the importance of having a note (or collection of practice) on rules and procedures to serve as a guidance and a reference the Committee can reference during its work. The note would of course be updated as often as the Committee finds it necessary. With some concrete suggestions the previous Committee referred the matter to the current Committee for furq0. 12 Tf1 a 2G[()] TJETvTf1 a 2G[()] TJETvTf1 a 2G[

single Member view was agreed) and in a 25 Member representative group, there may be other important non-Member stakeholders

15. In the view of the secretariat,

E/C.18/2017/CRP.27

Membership, composition and term of office

30. The Committee comprises 25 members nominated by Governments and acting in their expert capacity. The members, who are appointed by the Secretary-General after notification is given to ECOSOC, for a term of four years, are drawn from the fields of tax policy and tax administration and are selected to reflect an adequate equitable geographical distribution, representing different tax systems. As called for in the Addis Ababa Action Agenda, the Committee now meets biannually, once in the spring in New York, and once in the fall in Geneva.

Subcommittee system

31. The Committee formulated its working methods during its first session. Subsequently, ECOSOC, in its resolution 2006/48 recognized that the Committee agreed to create, as necessary, ad hoc subcommittees composed of experts and observers who would work throughout the year to prepare and determine the supporting documentation for the agenda items for consideration at its regular session. It recommended that subcommittees should use electronic communications where possible, but recognized that the efficient operation of these subcommittees may in future require some face-to-face meetings. The same resolution, requested the Secretary-General to establish a trust fund to receive voluntary contributions from Member States and other institutions interested in providing financing for the Committee's activities in supporting international cooperation in tax matters, including support for the participation of experts from developing countries.

32. The Committee has relied heavily on its subcommittees and working groups for its work, especially in relation to updating the UN Model. The subcommittees and working groups focus during the year on certain issues related to the Model and then present options, including specific wording for review and adoption by the Committee during its annual sessions. The subcommittees have also been instrumental in taking forward the Committee's work on revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries and on drafting of the UN Transfer Pricing Manual for Developing Countries, as well as in implementing other aspects of the Committee's mandate such as in the areas of new and emerging issues affecting international cooperation in tax matters and capacity building. As they fulfil their mandates, the subcommittees and working groups are dissolved by the Committee. As there was little or no real difference between subcommittees and working groups, in recent years only the subcommittees have been formed. There has been one advisory group of Committee members dealing with capacity building, however.

Composition of Subcommittees

33. One issue for consideration may be the *composition* of Subcommittees. The Committee must of course set the mandate for each Subcommittee and chose a coordinator. The practice has almost always been that the Coordinator of the Subcommittee comes from

34. In recent times, the composition of subcommittees has largely been left to Coordinators of subcommittees to determine, with some subcommittees composed of Committee Members only, some of governmental and intergovernmental officials only, and others broadly composed with industry, academic and civil society representatives as well. In view of the Committee's Mandate at Appendix 1, sufficient regional diversity and developing country representation is important, as is gender diversity. Leaving the choice of subcommittee Membership to coordinators has proven very successful, and probably should be continued.

35. There are trade-

Other Procedural Issues

43. The discussion on procedural issues at the fifteenth session is not confined to the above topics, and other matters exist where the experience and views of the current Membership, but also other participants in the Committee work (perhaps especially government observers), may be useful in addressing some of those issues.

APPENDIX 1: THE COMMITTEE MANDATE

In its resolution 2004/69, The UN Economic and Social Council (ECOSOC) decided to rename the Ad Hoc Group of Experts on International Cooperation in Tax Matters the Committee of Experts on International Cooperation in Tax Matters with a broad mandate to:

1. 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;
2. Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;
3. Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;
4. Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;
5. Give special attention to developing countries and countries with economies in transition in dealing with all the above issues.

Pascal Saint-Amans was Rapporteur for the second session. **It was also decided that the Rapporteur's reports at the beginning of each day should be concise, yet sufficiently reflect both majority and minority views.**

2007 Report: pa57 .98 531.19 Tm0 gf5B6 Tf170003>7516 TTf998 55>5 T98 03>3Tf318 6f52>4 C998 998 03

34. The point was made by two countries that in citing (at proposed para. 73) paragraph 23 of the OECD Commentary on article 1 (addressing base companies through controlled foreign corporations (CFC) legislation), there must be some regard for the fact that they and other OECD countries had observations on that paragraph. **It was noted that the issue of minority views had arisen in the context of permanent establishments, with note 2 of paper E/C.18/2007/CRP.3³ suggesting an approach to dealing with this issue. The issue was considered by the Committee and it was decided that relevant country positions should be included in the Manual rather than in the Commentaries themselves.**

2011 Report:

26. It was agreed that the quotation of paragraph 8.8 would be retained, and a new paragraph, **reflecting the minority view that there was a contradiction between paragraph 8.8 and paragraph 6 of the commentary on article 1, was approved for inclusion.** In that connection, it was also recalled that the content of paragraph 8.8 was not reflected in the commentary on article 1 owing to the fact that the Committee had not fully considered the issues raised in the 1999 OECD publication *The Application of the OECD Model Tax Convention to Partnerships*. It was agreed that the new paragraph, which would follow the quoted paragraph 8.8 of the OECD commentary, would read as follows: **Some members of the Committee of Experts did not agree** with the proposition in paragraph 8.8 of the OECD commentary extracted above that the partners of fiscally transparent partnerships can claim the benefits of the Convention. They what the c1 0 5s f>OECD nBT/F1 12 Tf

67. Discussions mainly focused on the text of the article itself and the **expression of the minority position in the commentary**. There was initially some discussion of the relationship with other articles in the Model Convention, in terms of priority or otherwise. As a result, it was decided that paragraph 2 of the new article did not need to address its relationship with article 20 since there was no overlap between the two articles in practice. It was decided that it should be made clear in the wording that article 17 should be given priority over the new article.

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