

NOTE BY THE SECRETARIAT

The Subcommittee responsible for the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries (Model) was tasked with carrying out a general review of the Model to identify and amend inconsistencies, improve the clarity, and update or remove historic passages that no longer hold relevance.

A list of possible topics that could be addressed as part of the next update of the UN Model was prepared by the Coordinator of the Subcommittee, with inputs from the Subcommittee members and the Secretariat, and circulated among Committee members for comments.

This document and the comments received will be discussed during the forthcoming session of the Committee, with a view to finalizing the list of topics to be addressed in the next update of the Model.

POSSIBLE TOPICS FOR THE NEXT UNITED NATIONS MODEL TAX CONVENTION UPDATE

Note by the Subcommittee on the Updating of the UN Model Convention

The 2017 update of the United Nations Model Convention was largely focused on introducing the Base Erosion and Profit Shifting (BEPS) measures, the changes to international transport provisions, and the new Fees for Technical Services Article.

scope of work to be carried out by other subcommittees. As part of its work, the Subcommittee will be able to discuss the pros and cons of OECD Model changes with particular focus on the needs of developing countries. Any changes that are considered appropriate for the UN Model will need to be submitted to the Committee by way of a position paper.

WORK STREAMS IDENTIFIED IN THE 15TH AND 16TH COMMITTEE MEETINGS

Subcommittee on the Update of the United Nations Model Convention

1. Treatment of CIVs in the UN Model carried over from previous Committee:
 - i. Treaty characterization and treaty entitlement of CIVs;
 - ii. Application of Article 29 to CIVs;
 - iii. Application of treaties to so-called "CIVs";
 - iv. Practical application of treaty benefits to CIVs;
 - v. Treatment of the remuneration of fund managers; and
 - vi. Consideration of the concept of beneficial ownership to make clear who can be entitled to the treaty benefits.
2. A proposal by a previous member of the Committee to amend Article 13(5).
3. Review of the Article 5(6) definition of a permanent establishment with respect to insurance activities, including the treatment of reinsurance.
4. Changes previously made to OECD Model to reflect the evolution of treaty interpretation and practice.
5. Work of the Subgroup on Royalties, particularly on the tax treatment of software-related payments.
6. Consideration of the effectiveness of the Article 1(2) hybrid rule.
7. Consideration of other consequential changes that might be needed as a result of the 2017 update, including:
 - i. Review of the note at the end of Article 7 on the attribution of profits to a PE by reason of the mere purchase of goods and merchandise by that PE for the enterprise, as such situations would be covered by the expanded preparatory/auxiliary test in Article 5.
 - ii. Consideration of the effectiveness of the Article 1(2) hybrid rule.

Subcommittee on Tax Issues Related to the Digitalization of the Economy

This Subcommittee has a mandate to suggest measures and draft provisions related to the digitalization of the economy with regard to double tax treaties.

Subcommittee on Avoidance and Dispute Resolution

This Subcommittee has a mandate to improve the effectiveness of MAP by building on the work of the previous Subcommittee, including proposing changes to the UN Model and Commentary as appropriate.

May propose addressing issues relating to disputes on tax matters arising under the provisions of non-tax instruments, such as investment treaties and GATS in the UN Model. The OECD is working on this as well.

Subcommittee on Practices and Procedures

The work of this Subcommittee will consider how minority views are expressed in the UN Model Commentary which could result in changes.

OECD MODEL TAX CONVENTION – OTHER 2017 UPDATES

Title and Preamble – Explanations

The OECD provided explanations as to why the preamble and title of the Model have been changed. This is that the new title and preamble clarify the Model was not intended to create

ó Clarification that an enterprise which has undertaken a project but subcontracted all

Article 15 – Clarification on treatment of payments related to termination

- ó Amendments to the Commentary on Article 15 to provide rules for payments associated with the termination of employment that may give rise to treaty issues.
 - The Commentary established that to determine if a payment falls under paragraph 1 it is essential to identify the real consideration for such payments based on all relevant facts and circumstances.

Article 17 – Clarifications on application of the Article

- ó It was decided that the entertainers and sportspersons article lacked clarity as to what situations it applied to. Work was carried out on the Commentary to fix this by clarifying:
 - The concept of an entertainer or sportsperson (e.g. can be an amateur);
 - The application of Article 17 to car or horse racing prizes - paragraph 2 does not apply to prize money obtained by the owner of the horse or car because this money is not sufficiently related to the personal activities of the jockey or driver;
 - What the personal activities of the entertainer/sportsperson are, and to what

Other technical changes

6