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Item 5 (f) of the provisional agenda

Tax Treatment of Services

Subcommittee on Tax Treatment of Services

In order for the Subcommittee on Tax Treatment of Services to discuss the different provisions dealing with services under the UN Model Tax Convention a report entitled “Note on the taxation of services under the United Nations Model Tax Convention” was prepared by Professor Brian Arnold¹. An additional paper with further comments submitted by Mr. Arnold was also made public.²

The analysis in those notes provides a platform for discussions and decisions about further work on possible changes or additions to the UN Model.

The notes survey the provisions of the UN Model dealing with services and attempts to identify the principles underlying those provisions. In this regard Professor Arnold acknowledges that the provisions of the UN Model deal comprehensively with all types of services but identifies that the different treatment of various types of income from services under the UN Model raises difficult issues of qualification.

More specifically, the notes consider the treatment of fees for technical services performed by nonresidents and suggests some policy changes within the UN Model regarding services among which are: the adoption of a shorter time threshold regarding articles 5, 14 and 15; changes in article 17 with the aim of providing a limited gross source country or an unlimited net taxation for the source country; the inclusion of a provision permitting source taxation (limited gross taxation or unlimited net taxation) in relation to technical and other similar services.

Some comments were received from members of the Subcommittee (Mr. Marcos Valadao, and Mr. Tomas Balco) which express some concerns on aspects included in the refereed notes and make some proposals from the viewpoint of “source countries”. Other comments were received from Mme Claudine Devillet which express concerns on

¹ <http://www.un.org/esa/ffd/tax/documents/2010.htm>

² http://www.un.org/esa/ffd/tax/sixthsession/CRP7_Add1.pdf

allowing too much source taxation from a perspective of the administrative burden and also the need to increase cross border services between all countries.

Ways forward

It is proposed that the Committee discusses and makes a decision in relation to the approach to be followed by the Subcommittee in order to organize its future work. Some alternatives having in mind the comments received are as follows:

1) Comprehensive Approach

- Under this approach, all of the provisions of the UN Model dealing with services would be reviewed and revised as necessary, along with the Commentary. One possibility to implement a comprehensive approach is to embark on an article-by-article review of all the provisions of the UN Model.

2) Articles 7 and 14

- This approach would focus on the most important type of services: business services, including professional services. In this regard, an analysis on the possibility of granting taxing rights (Gross or/and Net basis taxation) to the source country without the existence of PE or Fixed Base should be discussed.

3) OECD Services PE Provision

- This approach would attempt to adapt the OECD provision to improve it and make it more appropriate for developing countries.

3) Technical Fees

- Under this approach, the work would focus on developing a new Article and Commentary dealing with the taxation of fees for technical, management, and consulting services.

It may be noted that there could be an interest for developing more than one of the above approaches.

Finally it is proposed to discuss the format of the result of the work on a services document. In particular, should it be part of the Commentary to the UN Model? It would not be able to be part of the 2011 update if the work for that is concluded at the October 2011 meeting; however that does not mean that it could take the form of a Commentary for a future update and be approved as such by the Committee at its 2012 meeting.

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