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

Fifth Session

Geneva, 19-23 October 2009

Item 6 (b) of the provisional agenda

**Taxation of services, including royalties and technical
fees: policy and technical issues**

**Note Provided by the Coordinator of the Subcommittee on Article 14
and the Tax Treatment of Services**

Summary

At the 2008 Annual Session, the Committee of Experts on International Cooperation in Tax Matters set up a new subcommittee which was mandated to work on proposals for updating and improving Article 14 of the UN Model and the tax treatment of services. The group was formed by Ms. Habiba Louati, Ms. Anita Kapur and Ms. Liselott Kana (Coordinator). This initial note is provided by the Coordinator based on discussions within the subcommittee.

* This report should not be taken as necessarily representing the views of the United Nations.

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I. Introduction

1. At the 2008 Annual Session, the Committee of Experts on International Cooperation in Tax Matters set up a new subcommittee which was mandated to work on proposals for updating and improving Article 14 of the UN Model and the tax treatment of services. The group was formed by Ms. Habiba Louati, Ms. Anita Kapur and Ms. Liselott Kana (Coordinator). This initial note is provided by the Coordinator based on discussions within the subcommittee.
2. As a result of the work of the subcommittee on the Definition of Permanent Establishment which proposed the deletion of Article 14, a number of delegates and observers expressed their intention to maintain Article 14 on independent personal services within the UN Model.
3. Amongst the arguments for retaining Article 14 it was pointed out that the current Article 14 of the UN Model plays an important role for source taxation oriented countries, guaranteeing an appropriate taxation balance between source and residence States.
4. However, it was also indicated that Article 14 creates some interpretative problems affecting its practical application. This Note intends to express some of those problems in order for the new Committee to be able to evaluate and direct the work to be undertaken. Attached as an Annex is a questionnaire which has been sent to country participants in order for the subcommittee to receive input from as many participants as possible.

II. Problems with the Current Version of Article 14

5. Some difficulties expressed regarding Article 14 are as follows:
 - **Coverage of activities other than furnishing of professional services.** The main problem in this regard is that the current Article 14 includes in its wording the phrase “*other activities of independent character*” which is neither defined in the Model nor explained by the UN Commentaries.
 - **Uncertainties over scope.** The issue of personal scope has been largely discussed. While some countries consider that Article 14 must be applied only to individuals, others apply the Article to both individuals and companies.
 - **Difficulties in applying Article 14 due to diverging interpretations on the term “fixed base”.** The current Commentaries point out that the term fixed base is analogous to permanent establishment. However, some delegates have indicated that they make some distinctions between the two terms.
 - **Deduction of expenses by a fixed base.** The UN Commentaries refer to the OECD Commentaries and point out that deduction of expenses by a fixed base must be allowed under Article 14. However, such possibility is not explicitly mentioned in the text of Article 14 - which in some countries creates problems of interpretation.

III. Discussion on Proposals for Improving Article 14

6. Bearing in mind the areas of difficulty just noted, the discussion on proposals to improve Article 14 could usefully focus on issues such as:

- **coverage of activities other than furnishing of professional services;**
- **uncertainties over the scope of Article 14 with regard to residents (individuals and companies);**
- **difficulties in applying Article 14 due to diverging interpretations of the term “fixed base”; and**
- **deduction of expenses by a fixed base.**

IV. Discussion on how to Deal with Services in General and, in Particular, Fees for Technical Assistance

7. The subcommittee welcomes discussion on addressing the services issue in general, as well as on the particular issue of the treatment of fees for technical assistance.

**ANNEX: Questionnaire for UN Tax Committee Annual Session participants
(Committee Members and Country Observers).**

Subcommittee on Article 14 and the Tax Treatment of Services

Name and country (optional):

No.	Questions	Yes	No	N/A
1.	Would you prefer to eliminate Article 14 in the UN Model?			
2.	Do you consider that deletion of Article 14 would reduce source country taxing rights?			
3.	Would you prefer to have Article 14 applying for services rendered by both individuals and companies?			
4.	Do you consider that taxation of service income under Article 14 should be calculated on a gross basis?			
5.	Do you consider that the term fixed base used in Article 14 is broader than permanent establishment?			
6.	The overlap between Article 14 and Article 5 par. 3 (b) may have caused problems and one way to deal with this could be to deal with services (other than employment) in one Article. Should we focus our work on Article 14 to achieve that?			
7.	Would you support the idea to include in the UN Model an alternative provision which gives taxing rights to the source country on fees for technical services?			
8.	In case your country includes "technical services" in your treaties, do you have a definition (in the treaty or in domestic law) of what is intended to be covered by such services?			
9.	Would you support the idea to include in the UN Model an alternative provision which gives taxing rights to the source country for services in general (without reference to technical services), ?			

Comments:

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Note: The above questionnaire is exclusively intended for the ongoing work of the subcommittee on Article 14 and tax treatment of services and therefore answers provided by delegates do not constitute the official position of any person that responds.