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

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Item 4 (a) of the provisional agenda

Discussion of substantive issues related to international cooperation in tax matters

General issues in the review of Commentaries

**Comments on the Proposal for Amendments of the United Nations
Model Double Taxation Convention between Developed and
Developing Countries: Further Issues Relating to Permanent
Establishment**

Conference Note*

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Comments on the Proposal for Amendments of the United Nations Model Double Taxation Convention between Developed and Developing Countries: Further Issues Relating to Permanent Establishment

This note expresses some views and ideas in relation to the work done by the Subcommittee on Article 5 of the UN Model dealt with in the paper “*Proposal for Amendments of the United Nations Model Double Taxation Convention between Developed and Developing Countries: Further Issues Relating to Permanent Establishment*” issued by the Subcommittee on Definition of Permanent Establishment (“the Subcommittee”). The idea is to facilitate the discussion of this work.

The problem and what this paper will try to amend is that many countries will prefer to maintain Article 14 instead of eliminating it as that Article is perceived as more generous for source taxation. The paper will therefore try and present alternatives that solves these conflicts. It is recognized that retaining Articles 5, 7 and 14 in their present wording is causing interpretative difficulties.

1. Elimination of “*especially*” in Article 5 (2)

This elimination will be a strange change as this word is identical in the OECD and the UN Model. Therefore the position of those members in the Subcommittee that wanted to retain this word “on the basis that its removal was not likely appreciable improve clarity or certainty” is justified.

2. Rewording and renumbering Article 5 (3)(a) as article 5 (3)

The discussion on the issue of what constitutes a deeming provision in Article 5 is important. If paragraph (3) is not a deeming provision, in order to meet the requirement to be a permanent establishment the conditions under paragraph (1) will have to be met. The wording of the UN Model however is expressly establishing a deeming provision by using the words “*also encompasses*”. In this context the word “*also*” is the key word which means that paragraph 3 (a) and (b) are deeming provisions which differentiates this paragraph from paragraph 2. There seem also to be an inconsistency in arguing that paragraph 3 (a) is not a deeming provision but accepting that paragraph 3 (b) is when both subparagraphs have the same heading. If the drafters of the UN Model intended to make this paragraph subject to paragraph 1 conditions they could have used the OECD wording but as we have

commentary on that Article *is relevant.*” The OECD Model tries to set out what is covered by the Article. If

Differences in time thresholds

There is no necessity to eliminate Article 14 in order to harmonize or rationalize the time thresholds included in Article 5 and 14.
