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Committee of Experts on International
Cooperation in Tax Matters

Membership

in maintaining a relevant and coherent set of international tax rules. The proliferation of unilateral approaches is likely to have adverse impacts on investment and growth, and risks increasing double taxation and complexity for taxpayers and tax authorities alike.

4. However, the tax issues raised by digitalisation are technically complex, and this interim report identifies the different views among countries on whether and to what extent the features of highly digitalised business models and digitalisation more generally should result in changes to the international tax rules. Overall, there is support for undertaking a coherent and concurrent review of two key aspects of the existing tax framework, nexus and profit allocation rules that would consider the impacts of digitalisation.

5. The work required to further progress discussions on these complex issues is identified in Chapter 5. In addition to refining the understanding of the value contribution of certain aspects of digitalisation, technical solutions will also be explored to test the feasibility of different options. In addition to ongoing dialogue between Inclusive Framework members, this process will also involve ongoing engagement with different stakeholder groups, including business, civil society and academia. Following an update on progress in 2019, the Inclusive Framework will work towards a consensus-based solution by 2020.

6. There is no consensus on the merits of, or need for, interim measures, and therefore this report does not make a recommendation for their introduction. Chapter 6 recognises that a number of countries do not agree that features such as “scale without mass”, a heavy reliance on intangible assets or “user contribution” provide a basis for imposing an interim measure and consider that an interim measure will give rise to risks and adverse consequences irrespective of any limits on the design of such a measure, including as a result of un3 0 Td [(TE (nd ...(oc)4 (i)- (ont2-20 (y)20a (e)4 (nd)-11 (u2 (bl)-2 (

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- A Proposal for a Council Directive laying down rules relating to the taxation of a significant digital presence (the so called long term solution);
- An Annex to that Proposal including a list of European domestic taxes on which the Proposal would apply and a list of services that would be targeted by the Proposal;
- A Commission Recommendation relating to the corporate taxation of a significant presence;
- A Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (the so called interim solution).

Earlier, on the 21st September 2017, the EC had issued a Communication to the European Parliament and the Council "A Fair and Efficient Tax System in the European Union for the Digital Single Market".

The EC documents can be found here:

Annex 1

Possible Questionnaire for Committee members on Challenges from the digitalization of the economy

1. Can you describe which concerns governments of developing countries could have regarding the taxation of multinational enterprises (MNE's)?

   a) Regarding direct taxes

   b) Regarding indirect taxes

2. Which of these concerns are exacerbated due to the digitalization of the economy?

3. Does this relate to all sectors of MNE's or to a specific sector?

   a) If to a specific sector, how would you describe the services this specific sector provides?

4. Do you agree with the principle that profits of MNE's should be taxed where value is created?

   If not, what should be the correct base for attributing taxing rights on MNE's?

5. Do the concerns you described under Q1 and Q2 relate to the fact that the current rules do not allow taxation where value is created?

   If so, could you indicate which rules you refer to?

   If so, why do you think that value is created in the State that does not have the taxing right over services described under Q3a? How is that value created?

6. Has your country introduced tax measures aimed at taxing certain digital services over the last 2 years?

7. Could you give the reason why they were introduced and describe those measures?

Annex 2

United States

One of the aspects of the digital economy that both the OECD Report and the EC proposals mention is its heavy reliance on intangible assets. In that light the SubCo TCRDE should take note of recent developments in the US. On the 1st January 2018 a set of measures known as the Tax Cut and Jobs Act entered into force. For corporate tax and international business, the following elements are relevant:

The tax rate was decreased from 35% to 21%
Past profits held off shore will be taxed at a rate of
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The following summary of the International Tax Provisions of The United States Tax Reform Bill as Enacted can be found.

The United States Senate passed today, and the House of Representatives passed yesterday, a final tax reform bill that reconciled competing House and Senate bills and amends current Code provisions to create a new U.S. approach for taxing international commerce. The bill will be enacted into law upon the President's signature and generally will be effective for tax years beginning after December 31, 2017.

Territorial System with Enhanced CFC Regime.

The final bill would reduce the corporate income tax rate to 21% and shift the United States towards a territorial system of taxation. Any amounts earned by foreign subsidiaries of U.S. corporations that are not taxed currently under a controlled foreign corporation ("CFC") regime could be distributed back to corporate U.S. shareholders free of U.S. tax. The CFC regime would include the existing rules that tax U.S. shareholders currently on the passive income of CFCs and would also include new rules that tax U.S. shareholders currently on certain excess returns earned through CFCs that are not subject to a minimum level of foreign tax. Under these new rules, a U.S. parent corporation would currently include in income the excess returns of its CFCs (termed "global intangible low-taxed income"), which generally would be calculated as CFC income in excess of a 10% return on the tangible assets of the CFCs. The U.S. parent corporation would be entitled to deduct an amount equal to 50% of the excess returns amount included and would be able to credit against its U.S. income tax 80% of the foreign taxes paid by the CFCs on the excess returns amount. Because the U.S.

parent would be including 50% of the excess returns amount to be taxed at a 21% corporate tax rate, all excess returns would be taxed at a combined US and foreign effective tax rate of at least 10.5%. Taking into account the allowance of a foreign tax credit for 80% of foreign taxes paid, no additional US tax would be owed if the excess returns of all CFCs in the aggregate have been subjected to foreign tax at an average rate of at least 13.125%. In general, no U.S. tax would be imposed on the distribution of earnings back to a corporate U.S. shareholder paid after December 31, 2017. However, foreign branch operations of a domestic corporation would continue to be subject to current U.S. taxation. Furthermore, taxable dispositions of CFC stock would continue to be subject to U.S. taxation, excluding the portion of gain attributable to undistributed earnings.

Transition Tax.

In connection with the transition to a territorial system, a tax would be imposed on the accumulated untaxed post-1986 earnings of foreign subsidiaries. The rate would be 15.5% for earnings held in the form of cash and cash equivalents and 8% for other earnings. Foreign tax credits would be permitted to reduce the tax due, but foreign tax credits would be scaled back proportionately with the rate reduction, with the effect that some U.S. tax would be due unless the average effective foreign tax rate on the accumulated earnings was at least 35%. This transition tax would arise on a deemed repatriation of the earnings as of the last day of the last taxable year of each foreign subsidiary beginning before January 1, 2018. The tax would be payable in instalments over 8 years (with no interest charge).

Foreign-Derived Intangible Income Deduction

The final bill contains a separate regime intended to benefit foreign-derived intangible income of domestic corporations. The intangible income of a domestic corporation would be defined as the excess of its