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**Ad Hoc Group of Experts on International Cooperation in Tax Matters**

Focus Group

Second meeting

Amsterdam, 22–24 March 1999

**Draft report of the Focus Group of the Ad Hoc Group of Experts on International Cooperation in Tax Matters on its first meeting****I. Introduction**

1. In its resolution 1273 (XLIII) of 4 August 1967, the Economic and Social Council requested the Secretary-General to set up an ad hoc working group consisting of:

“experts and tax administrators nominated by Governments, but acting in their personal capacity, both from developed and developing countries and adequately representing different regions and tax systems, with the task of exploring, in consultation with interested international agencies, ways and means of facilitating the conclusion of tax treaties between developed and developing countries, including the formulation, as appropriate, of possible guidelines and techniques for use in such tax treaties which would be acceptable to both groups of countries and would fully safeguard their respective revenue interests”.

2. In its subsequent resolutions 1980/13 of 28 April 1980 and 1982/45 of 27 July 1982, the Economic and Social Council emphasized the need for the Ad Hoc Group of Experts to:

(a) Formulate guidelines for international cooperation to combat international tax evasion and avoidance;

(b) Continue the examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and consider the experience of countries in bilateral applications of the Model Convention;

(c) Study the possibilities of enhancing the efficiency of tax administrations and formulate appropriate policy and methodology suggestions;

(d) Study the possibilities of reducing potential conflicts among the tax laws of various countries and formulate appropriate policy and methodology suggestions.

3. In its efforts to revise the United Nations Model Double Taxation Convention between Developed and Developing Countries,<sup>1</sup> and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*,<sup>2</sup> the Ad Hoc Group of Experts at its eighth meeting (Geneva, December 1997) requested the Secretariat to organize a Focus Group and refer the results of its work to the Group of Experts at large during its ninth meeting. Accordingly, the first meeting of the Focus Group was held in New York on 9 and 10 December 1998.



## II. Opening of the meeting

4. The Focus Group meeting was opened by Nitin Desai, Under-Secretary-General for Economic and Social Affairs, who emphasized the importance of updating the United Nations Model Convention. Mr. Desai pointed out that, in its advisory capacity to the Secretariat, the Ad Hoc Group of Experts on International Cooperation in Tax Matters had provided invaluable advice in the area of international taxation guidelines and income allocation. Recalling Council resolution 1273 (XLIII), he reiterated that the members of the Ad Hoc Group of Experts acted in their personal capacity in the formulation of guidelines and in the revision of the United Nations Model Convention and of the *Manual* which would facilitate the negotiation of bilateral tax treaties between developed, developing and transitional economy countries. The Under-Secretary-General also pointed out that, in view of the significant changes in the international economic, financial and fiscal environment, the revision of the United Nations Model Convention and the *Manual*, published in 1980, took on particular significance for the strengthening of cooperation between the groups of countries involved. He referred to the revisions of other model conventions, including the Model Tax Convention on Income and Capital of the Organisation for Economic Cooperation and Development (OECD), which was revised in 1992, 1994, 1995 and 1997. Finally, he pointed out that the United Nations Model Convention and the *Manual* needed to be reviewed, to take into account the growth of tax havens, new financial instruments, transfer pricing and other mechanisms. He appreciated the efforts made by the members of the Focus Group in undertaking that important work and wished their deliberations all success.

## III. Adoption of the agenda

5. The Focus Group adopted the following agenda for its first meeting:

1. Examination of the United Nations Model Convention update undertaken by the Ad Hoc Group of Experts on International Cooperation in Tax Matters at its eighth meeting;
2. Review of the commentaries on the United Nations Model Convention;
3. Report of the Focus Group.

## IV. Methodology

6. Members of the Focus Group agreed to review article-by-article the United Nations Model Convention and base its discussion on two working papers prepared by the Secretariat: one outlining the revisions to the Model Convention adopted by consensus by the Ad Hoc Group of Experts at its eighth meeting (December 1997) (ST/SG/AC.8/1998/WP.9) and one setting out various proposals for revision of the Model Convention offered by various members of the Ad Hoc Group of Experts (ST/SG/AC.8/1998/WP.11).

## V. Proceedings

7. The discussion was initiated by a member of the Focus Group who reiterated that in conducting the revision and update of the United Nations Model Convention, the members of the Ad Hoc Group of Experts acted in an advisory capacity to the Secretary-General as provided in Council resolution 1273 (XLIII). Another member pointed out that the Model Convention should serve the interests of developed and developing countries and those with economies in transition. Another member of the Focus Group observed that the purpose of the revision of the Model Convention was to prepare a new version for the twenty-first century, reflecting the evolution of the new international economic, financial and fiscal environment, serving the interests of both capital-exporting and capital-importing countries. He emphasized that the Model Convention drew largely on the guidelines and comments of the OECD Model Convention. Another member pointed out that in undertaking the revision of the United Nations Model Convention, the Focus Group should deal not only with the points specifically referred to it by the Ad Hoc Group of Experts but also other issues mentioned by members of the Ad Hoc Group.

8. Thereafter, the Focus Group dealt with the text of the articles of the United Nations Model Convention.

### Title of the Convention

9. The Focus Group noted the following addition made by the Ad Hoc Group of Experts at its eighth meeting in the note below the title of the Convention:

States wishing to do so may follow the widespread practice of including in the title a reference to either the avoidance of double taxation or to both

the avoidance of double taxation and the prevention of fiscal evasion.

This change was adopted by consensus.

### Article 1

10. The Focus Group noted that, at its eighth meeting, the Ad Hoc Group of Experts had changed the title of article 1 from "Personal scope" to "Persons covered". This change was adopted by consensus.

### Article 2

11. No change was made to the text of article 2 at the eighth meeting. One participant observed that, since the United Nations Model Convention would apply to taxes on income and on capital, there was no need to bracket the phrase "and on capital" in paragraphs 1 and 2 or the phrases "on total capital" and "or of capital" in paragraph 2, and that the brackets in paragraph 3 should be removed. This was adopted by consensus.

12. The Focus Group considered the suggestion received from a member of the Ad Hoc Group of Experts that the phrase "taxes on the total amounts of wages or salaries paid by the enterprises" could be deleted. Although the phrase was not considered strictly to reflect taxes on income or capital, it was not considered necessary to remove it from paragraph 2. Some participants indicated their unhappiness with the reference in paragraph 2 to certain taxes and not to others. However, no further addition to the types of taxes enumerated was proposed; however it was recommended that such additional taxes be specified in the commentaries.

13. One participant expressed the view that the last sentence in paragraph 4 was over-broad, since most of the Contracting States did not communicate with one another on every change in their tax laws. Another participant suggested that the requirement to exchange information on changes in tax laws should extend only to significant changes in law that affected the application of the treaty and noted that similar provisions can be found in many treaties. The consensus of the Focus Group was that the second sentence in paragraph 4 might be replaced with the following sentence:

To this effect, the competent authorities of the Contracting States shall notify each other of relevant changes made to their tax law.

### Article 3

14. The Focus Group noted that the Ad Hoc Group of Experts had made the following changes to the text of article 3:

(a) In paragraph 1, a new subparagraph (f) defining the term "national" has been inserted; it consists of paragraph 2 of article 24;

(b) Paragraph 2 has been redrafted thus:

As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

### Article 4

15. The Focus Group noted that the Ad Hoc Group of Experts had made the following changes:

(a) In paragraph 1, after "similar nature", add "and also includes that State and any political subdivision or local authority thereof";

(b) In paragraph 2, the word "only" has been added in subparagraphs (a), (b) and (c) at the specified places;

(c) In paragraph 3, the word "only" has been added after the words "to be a resident".

16. One participant suggested that the commentary to paragraph 1 of article 4 could be amended to refer to "place of incorporation" as a possible criterion among the several criteria for "residence" enumerated in paragraph 1. The Focus Group agreed to make the necessary change.

### Article 5

17. No change was made to the text of article 5 by the Ad Hoc Group of Experts. However, the Focus Group approved certain minor changes.

18. The Focus Group examined a suggestion to add "fishing vessels" in subparagraph 2 (f) as an example of a "place of extraction of natural resources". Some participants suggested that fishing vessels could be considered a "permanent establishment" but that no change to the text of

article 5 was necessary and that an explanatory note could be added on this matter in the commentaries.

19. The Focus Group considered whether the reference to the six-months test in subparagraph 3 (b) should be amended to leave the number of months blank (that is, to make no specification in the text of the treaty as to the number of months that would determine the existence of permanent establishment). A participant noted that in other articles in the United Nations Model Convention — namely, the withholding rate of tax for dividends in article 10 — the rates were left blank. Other participants, however, expressed concern about the negative inference that could be created by deleting the number of months. It was noted that the study of the International Bureau of Fiscal Documentation (IBFD) on the usage of the United Nations Model Convention pointed out that over half of the treaties containing subparagraph 3 (b) adopted the six-months test, 11 had 12 months and six had 120 days. Another participant noted that the commentary to the United Nations Model Convention provided for the possibility of a different number of months being chosen by negotiation of the Contracting States. Another participant observed that the technological advances made the period of six months too liberal. After discussion, it was decided to maintain the existing position without any change.

20. The Focus Group considered whether the use of facilities for the “delivery of goods” should be added to subparagraph 4 (b) as an example of an activity that would not give rise to a permanent establishment. It was noted that the phrase “delivery of goods” is included in subparagraph 4 (b) of the OECD Model Convention. A participant noted that many developing countries had agreed to raise the threshold of permanent establishment, and that 75 per cent of the tax treaties of developing countries surveyed in the IBFD study included “delivery of goods” in subparagraph 4 (b). Another participant, however, observed that the omission to include “delivery of goods” in subparagraph 4 (b) was a distinguishing feature of the United Nations Model Convention and the existing position might be retained. Another participant observed that even if such activity did give rise to a permanent establishment, very little income could be attributed to it and thus, practically, it would have little effect. On the other hand, it was contended that if such activity could give rise to a permanent establishment, tax authorities would be inclined to attribute income to the activity whether in reality there was any income or not. The consensus of the Focus Group was that the commentary on subparagraph 4 (b) should be amended to reflect the conflicting views referred to above but that there was no need to make any textual change in the article.

21. The Focus Group then considered whether to include a new subparagraph 4 (f):

(f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a)–(e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

This proposed subparagraph is currently contained in the OECD Model Convention. It was decided by the Focus Group to include it under article 5.

22. While discussing the scope of paragraph 7, a participant contended that the second sentence could give rise to anomalous situations. As drafted currently, wherever the number of enterprises for which an agent of an independent status was working was reduced to one, such an agent’s status was changed to “agent of dependent status”. It was decided by consensus to overcome the situation by redrafting the sentence, and the Focus Group considered the following new sentence:

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

## Article 6

23. There was no change made to the text of article 6 by the Ad Hoc Group of Experts. However, one participant suggested amending the article to provide for companies and other persons whose fixed assets comprised of immovable properties that the distribution of profits should be treated as income from immovable properties and not as income from movable properties. Another participant noted that the income of a company which distributed dividends did not partake of the same character in the hands of the shareholder. It was decided by consensus not to adopt the proposal for amendment of article 6.

## Article 7

24. The Focus Group considered the last sentence in paragraph 1 (limited force of attraction). According to the IBFD study of 811 treaties entered into by developing countries with developed countries, about 162 treaties, or only 20 per cent, contained such a provision. However, after discussion, it was decided by consensus that since the provision was an anti-avoidance measure, no change to the text of the last sentence of paragraph 1 should be made. Several participants suggested that the commentary to paragraph 1 be amended to reflect usage of the last sentence.

25. The Focus Group considered whether to replace paragraph 2. One member pointed out that, since the principle of price evolved in perfect competition also concerned the transactions between a permanent establishment with its head office and other permanent establishments, paragraph 2 might be redrafted to bring out that intention. After discussion, it was decided to redraft paragraph 2 thus:

Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on its activities in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed, to such permanent establishment, the profits which it might be expected to make if it were a distinct enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or, as the case may be, the other permanent establishments of that enterprise.

26. Regarding paragraph 3, several members pointed out that the existing provision was not worded properly, which resulted in loss of revenue to developing countries. It was pointed out that the deductibility of expenses of a permanent establishment should be permitted only in the case of actual expenses incurred by the permanent establishment and of their direct connection with the establishment's operations.

27. After discussion, it was decided that it might not be possible to make any amendment to the existing provision to bring out the intention more clearly because it was difficult to state either a monetary or other limitation for deductibility of expenses relating to the operations of the permanent establishment. However, the commentaries should lay down guidelines or principles to ensure that the deduction of expenses was on a more rational and scientific basis.

28. The question of making a specific provision in paragraph 5 along the lines of the one in the OECD Model — namely, that no profits might be attributed to a permanent establishment to mere purchase by that permanent establishment of goods or merchandise for the enterprise — was discussed. Since under article 5 an office or facility maintained by an enterprise in a Contracting State in the other Contracting State for mere purchase of goods or merchandise does not constitute a permanent establishment, there would be very few cases where an enterprise having a permanent establishment dealing with other business would also have a purchasing facility for the enterprise. However, it was not considered necessary to make any change in the existing provisions, and the Group agreed to allow the matter to be decided in bilateral negotiations.

## Article 8

29. The Focus Group noted that article 8 had not been discussed by the Ad Hoc Group of Experts at its eighth meeting. The members, however, agreed with the editorial change made to the title of article 8: instead of "Article 8A (alternative A)" and "Article 8B (alternative B)", it would be more appropriate to write "Article 8 (alternative A)" and "Article 8 (alternative B)".

30. The Focus Group noted that one member of the Ad Hoc Group of Experts had suggested that the scope of article 8 might not be extended to cover inland transportation in bilateral conventions. No specific reasons were adduced in support of that contention. The Focus Group decided that, since the provisions of article 8 relating to inland transportation have been in the United Nations Model Convention for a long time and since no other member had ever objected to them, no interference was called for. Any country not wishing to refer to inland transportation could do so in its bilateral tax treaties.

## Article 9

31. The Focus Group noted the following changes made to article 9 by the Ad Hoc Group of Experts:

(a) In paragraph 1, subparagraph (a), for "An enterprise", the words "an enterprise" would be substituted. Similarly, in subparagraph (b), for the words "The same persons", the words "the same persons" would be substituted;

(b) In paragraph 1, for the words "but for those conditions, have not so accrued", the words "but for those

conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued" would be substituted.

32. As regards the change mentioned in (a) above, the Focus Group noted that the United Nations Model Convention had consistently used the capital letter at the beginning of each subparagraph; thus, it might not be necessary to make the proposed change.

33. Two specific points were raised with reference to paragraph 2, in which a country is required to make an "appropriate adjustment" (a correlative adjustment) to reflect a change in a transfer price made by the other country under article 9, paragraph 1. It was suggested by the Ad Hoc Group of Experts at its eighth meeting that if the transfer price corrected by the primary adjustment under paragraph 1 were fraudulent, no adjustment should be made. Another point made was that a correlative adjustment under paragraph 2 would be very costly to a small country, which might not be inclined to include paragraph 2 in its bilateral tax treaties.

34. After discussion, it was decided that if the initial adjustment were fraudulent, no adjustment could be made by the other country. The Focus Group decided that the position should be clarified by a specific amendment of the text. As regards the apprehension expressed by the developing countries, it was considered to be inappropriate to say that provisions of paragraph 2 of article 9 were found to be costly for the poor countries. The question whether they would like to make the secondary adjustment could be decided by them in bilateral negotiations.

35. As regards paragraphs 3 and 4, it was decided by the Focus Group that, although those paragraphs were included in the draft United Nations Model Convention presented to the Ad Hoc Group of Experts at its seventh meeting, they had never been discussed by the Ad Hoc Group and the exact purpose of their inclusion had never been made explicit. Hence, it was decided that paragraphs 3 and 4 could not be included in article 9.

### Article 10

36. The Focus Group noted that the Ad Hoc Group of Experts had made two specific changes in article 10:

(a) In paragraph 2, for the words "but if the recipient is the beneficial owner of the dividends the tax so charged", the words "but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged" would be substituted;

(b) In paragraph 2, in subparagraph (a), for the words "which holds directly at least 10 per cent of the capital", the words "which holds directly at least \_\_\_ per cent of the capital" would be substituted.

37. After discussion, the following decisions were taken:

(a) During the course of the eighth meeting, it had been decided that the new paragraph 6 in article 10, dealing with "branch tax", which had not been considered by the Ad Hoc Group of Experts, should be examined by the Focus Group. It was further suggested that since most countries did not have branch tax, the reference might be placed in the commentaries. It was observed by the Focus Group that the United States of America, France, Canada etc. levied branch tax. Still, since it was not applied by most countries, it might usefully be placed in the commentaries and not in the main text;

(b) The question of "thin capitalization" might be examined in the commentaries, taking into account the amount of loan, rate of interest and arm's length relationship between persons etc.

### Article 11

38. The Focus Group noted that at its eighth meeting the Ad Hoc Group of Experts had made two changes in article 11:

(a) In paragraph 2, for the words "but if the recipient is the beneficial owner of the interest the tax so charged", the words "but if the beneficial owner of the interest is a resident of the other State, the tax so charged" would be substituted;

(b) In paragraph 5, for the words "when the payer is that State itself, a political subdivision, a local authority or a resident of that State", the words "when the payer is a resident of that State" would be substituted.

39. During the discussion, one member suggested that it might be useful to include, as paragraph 7, an anti-abuse clause, in the following terms:

7. The provisions of this article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this article by means of that creation or assignment.

40. It was contended that it would be useful to add the following paragraph:

Nothing in this Convention shall prevent a Contracting State from applying its internal law referring to thin capitalization.

41. After discussion, it was decided that it might not be necessary to make a change of that sort in the text of article 11. However, it might be useful to include a paragraph in the commentaries to article 11 dealing with the anti-abuse provision and indicating that such a provision might be included by the Contracting States in their bilateral tax treaties during negotiations.

## Article 12

42. The Focus Group noted the following two changes made in article 12 by the Ad Hoc Group of Experts at its eighth meeting:

(a) In paragraph 2, for the words "but if the recipient is beneficial owner of the royalties, the tax so charged", the words "but if the beneficial owner of the royalties is a resident of the other State, the tax so charged" would be substituted;

(b) In paragraph 5, for the words "when the payer is that State itself, a political subdivision, a local authority or a resident of that State", the words "when the payer is a resident of that State" would be substituted.

43. During discussion, the members of the Focus Group made the following observations:

(a) Although the text of article 12, paragraph 1, had been changed to "Royalties arising in a Contracting State and beneficially owned by a resident", the Ad Hoc Group of Experts had, in fact, decided not to make a change in the language of paragraph 1 but had decided to retain the original formulation "Royalties arising in a Contracting State and paid to a resident", in conformity with the language in paragraph 1 of articles 10 and 11;

(b) In paragraph 2, the country of source is granted the subsidiary right to tax the gross amount of the royalties at a rate not exceeding an (unspecified) rate to be established through bilateral negotiations. It was considered necessary to specify a maximum rate of tax up to which the Contracting States could lay down the withholding rate of tax, taking into account the fact that significant expenditure is incurred on earning the royalty income on account of research and development expenses. Since the maximum rate of tax was not specified in the United Nations Model Convention, it was likely that a high rate of tax determined by the Contracting States may not only deter the flow of technology

to developing and transitional economy countries but also result in developed countries charging a much higher rate of royalty for the use of technical know-how, which might add to the cost of production. Hence, it was necessary to specify a maximum rate of tax up to which a rate could be fixed during bilateral negotiations;

(c) It might even be necessary to lay down two separate maximum rates of tax, one for new technology and another for renewed or old technology;

(d) The question of determination of expenditure on research and development in arriving at the appropriate rate of tax was likely to create difficulties for tax administrations in developing and transitional economy countries. It was explained that nearly 80 per cent of the cases of transnational corporations involved royalty payments made by subsidiary companies and associated enterprises to the head office. Hence, it was necessary to resolve the issue regarding the maximum rate of tax to be charged for royalty payments;

(e) The Focus Group was to consider the amendment made in the OECD Model Convention in the definition of "royalties" in paragraph 3, omitting "the payments for the use of or the right to use industrial, commercial or scientific equipment" from the purview of the royalty payments. However, it was also noted that many (non-OECD member) countries had not approved of that change which was perceived by them as prejudicial to the interests of revenue.

44. Since no consensus was reached on any of the above points by the members of the Focus Group, after discussion, it was decided that there was no justification for making any change to the text of article 12.

## Article 13

45. Although no change was made to the text of article 13 by the Ad Hoc Group at its eighth meeting, the following three issues were discussed by the Focus Group:

(a) To consider broadening the scope of paragraph 4 to deal with interests in partnerships, trusts and estates that own real property;

(b) To narrow the scope of paragraph 4 so as to exclude active businesses that own real property (for example, a hotel company), other than property management companies;

(c) To consider whether the rate of source tax on gains from the alienation of shares, other than real estate holding shares dealt with in paragraph 4, should be lower

than the normal domestic rate applied in the absence of a treaty.

46. During the discussion on (a) and (b), it was observed that paragraph 4 of article 13 provided that capital gains arising from the alienation of shares of the capital stock of a company the property of which consisted directly or indirectly principally of immovable property situated in a Contracting State might be taxed in that State. After discussion, the principle contained in the suggestion was found acceptable to the Focus Group, and it was decided to make the necessary amendment to paragraph 4 to give effect to the points in (a) and (b) above. It was also decided to specify the meaning of the expression "principally" in paragraph 4.

47. As regards (c) above, on the question of laying down a lower rate of source tax on capital gains arising on transfer of shares other than those referred to in paragraph 4, the Focus Group decided that there was no need to make any amendment to the text of article 13 in that regard. However, it might be desirable to insert a paragraph in the commentaries to bring the point to the attention of Contracting States which could be discussed by them during the course of bilateral negotiations.

#### Article 14

48. The Focus Group noted that the Ad Hoc Group of Experts had made the following change in the text of article 14: in paragraph 1, subparagraph (b), for the words "in the aggregate 183 days in the fiscal year concerned", the words "in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned" would be substituted.

49. During discussion by the Ad Hoc Group at its eighth meeting, it was agreed that the Focus Group might consider two points: to shorten the time threshold in subparagraph 1 (b), and to delete subparagraph 1 (c).

50. As regards the first point, under subparagraph 1 (b), the income of a professional resident of a Contracting State exercising his activities of an independent character in another Contracting State can be charged to tax in such other State if his aggregate stay in the other State in the 12-month period commencing or ending in the fiscal year concerned exceeds 183 days. The Focus Group could not reach a consensus on the question of reducing the time threshold laid down in paragraph 1 (b).

51. As regards the second point, at present paragraph 1 (c) provides that the income of the professional referred to

above can be charged to tax in the other State if the remuneration for his activities in the other State paid by a resident there or borne by a permanent establishment or a fixed base exceeds in the fiscal year an amount to be specified. The Focus Group observed that any such monetary ceiling limit would become meaningless over a period of time, due to inflation, and would only have the effect of limiting the amount of potentially valuable services that a country would be able to import. Moreover, the provision appeared in only 6 per cent of the existing treaties. Accordingly, the Focus Group recommended that the provision in paragraph 1 (c) of article 14 be omitted.

52. A suggestion made by a member to rearrange the "professional services" specified in paragraph 2 in alphabetical order was not accepted, since such a reordering might not be relevant in the French or Spanish version.

#### Article 15

53. There was no discussion of article 15 by the Focus Group.

#### Article 16

54. There was no change suggested to the text of article 16 by the Ad Hoc Group of Experts. However, it was agreed at its eighth meeting that the Focus Group would examine whether paragraph 2 should be deleted from the revised United Nations Model Convention.

55. Although paragraph 2 appeared in 9 per cent of the existing treaties and was also considered ambiguous, the Focus Group decided that no change in the existing position was called for.

#### Article 17

56. During its eighth meeting, the Ad Hoc Group of Experts made the following changes to the text of article 17:

(a) The title would be changed to "Artistes and sportsmen";

(b) In paragraphs 1 and 2, for the word "athlete", wherever it occurred, the word "sportsman" would be substituted.

57. The Focus Group decided to substitute the gender-neutral word "sportsperson" in place of "sportsman".



Accordingly, the title of article 17 and paragraphs 1 and 2 would be modified to reflect that change. *Notes*

### Article 18

58. There was no discussion regarding the text of article 18 during the eighth meeting of the Ad Hoc Group. However, several members of the Group suggested that paragraph 2 of article 18 A and paragraph 3 of article 18 B should be amended to deal with the fact that social security systems have been privatized in some countries.

59. The Focus Group decided that the question of privatization of social security systems might be looked into by examining some treaties where the issue had been dealt with and a relevant appropriate addition might be made in the commentaries.

### Article 19

60. The following changes were made to the text of article 19 by the Ad Hoc Group of Experts:

(a) The title would be changed to "Government service";

(b) In paragraphs 1 and 3, for the term "remuneration", wherever it occurred, the expression "salaries, wages and other similar remuneration" would be substituted.

61. The Focus Group decided that the question of tax treatment of Government meeting the expenses of artistes resident of one Contracting State performing their activities in another Contracting State might be dealt with in the commentaries.

62. The Focus Group noted the changes made to the text of the articles 20, 24 and 27 by the Ad Hoc Group of Experts at its eighth meeting.

63. There was no further discussion during the meeting of the Focus Group. It was decided that the second meeting of the Focus Group, to deal with the commentaries, would be held before the ninth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters, preferably in March 1999.

<sup>1</sup> United Nations publication, Sales No. E.80.XVI.3 and Corr. I.

<sup>2</sup> United Nations publication, Sales No. E.79.XVI.3.

## **Annex I**

### **Attendance**

The following members of the Focus Group attended the meeting: Mordecai S. Feinberg (United States), John Brian Shepherd (United Kingdom of Great Britain and Northern Ireland), Antonio Hugo Figueroa (Argentina), Mayer Gabay (Israel), and Abdelali Benbrik (Morocco).

Antonio Hugo Figueroa served as Chairman of the Focus Group; Abdel Hamid Bouab served as Secretary, and Suresh Shende as Assistant Secretary. They were assisted by Harold Ullman as resource person to the Secretariat.

## Annex II

### Documentation

The Focus Group had before it the following documents:

United Nations Model Double Taxation Convention between Developed and Developing Countries (ST/SG/AC.8/1998/WP.1)

Articles of the United Nations Model Double Taxation Convention between Developed and Developing Countries (ST/SG/AC.8/1998/WP.1/Rev. 1)

Issues in the 31 July 1998 draft of the United Nations Model Double Taxation Convention between Developed and Developing Countries requiring the attention of the Focus Group (ST/SG/AC.8/1998/WP.2)

Comments on the 31 July 1998 draft of the United Nations Model Convention requiring the attention of the Focus Group (ST/SG/AC.8/1998/WP.3)

Comments on the 31 July 1998 draft of the United Nations Model Convention requiring the attention of the Focus Group (ST/SG/AC.8/1998/WP.4)

Comments on the 31 July 1998 draft of the United Nations Model Convention requiring the attention of the Focus Group (ST/SG/AC.8/1998/WP.5)

Observations relatives à la mise à jour de la Convention modèle de l'Organisation des Nations Unies (ST/SG/AC.8/1998/WP.6)

Observations relatives à la mise à jour de la Convention modèle de l'Organisation des Nations Unies (ST/SG/AC.8/1998/WP.7)

Comments on the 31 July 1998 draft of the United Nations Model Convention requiring the attention of the Focus Group (ST/SG/AC.8/1998/WP.8)

Articles of the United Nations Model Convention (ST/SG/AC.8/1998/WP.9)

Proposed amendments to the United Nations Model Convention (ST/SG/AC.8/1998/WP.10)

Comments and suggestions relating to the articles of the United Nations Model Convention made by the members of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (ST/SG/AC.8/1998/WP.11)

Background paper (ST/SG/AC.8/1998/WP.12)