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Item 3 (i) of the provisional agenda\*

**Taxation issues related to the digitalized and  
globalized economy****Proposed text of a fast-track instrument to provide for the  
streamlined amendment of bilateral double taxation treaties****Note by the Secretariat**

The present note contains the proposed text, finalized by the Committee of Experts on International Cooperation in Tax Matters at its twenty-eighth session, held in March 2024, of a fast-track instrument to provide for the streamlined amendment of bilateral double taxation treaties. The text will be submitted to the Economic and Social Council with a view to consideration by Member States for development into an instrument for accelerating the process of incorporating the provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries into bilateral tax treaties. An update on developments will be provided at the thirtieth session of the Committee. The Committee may wish to take note of the present note.

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\* [E/C.18/2025/1](#).



# **FAST-TRACK INSTRUMENT TO PROVIDE FOR THE STREAMLINED AMENDMENT OF BILATERAL DOUBLE TAXATION TREATIES**

## **PREAMBLE**

*The Parties to this Fast-Track Instrument,*

*Desiring* to establish a procedure for facilitating the amendment of existing bilateral double taxation treaties by Parties wishing to make such amendments in a fast and effective manner,

*Intending* that this procedure will be established to give effect to the provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries, including amendments made to the United Nations Model after the date that this Instrument is opened for signature, in double taxation treaties concluded between the Parties to this Instrument,

*Seeking* to achieve a greater degree of standardization and uniformity in the double taxation treaties concluded between Parties to this Instrument in respect of both the wording and the contents of those treaties,

*Have agreed* as follows:

## **PART I DEFINITIONS AND PURPOSE**

### **Article 1 Definitions**

For the purposes of this Instrument, the schedules and any amending protocol concluded pursuant to it:

1. “Amending protocol” means an agreement concluded by two or more Parties to this Instrument in accordance with the terms of a schedule to this Instrument [and includes an amending protocol concluded under the enhanced procedure in Article [6]].
2. “Committee of Experts” means the Committee of Experts on International Cooperation in Tax Matters and any successor body tasked by the United Nations with updating the United Nations Model Double Taxation Convention between Developed and Developing Countries.
3. “Covered tax treaties” means the double taxation treaties contained in the lists prepared in accordance with Article 4 (Standard procedure for matching Parties).
4. “Depository” means the Secretary-General of the United Nations.
5. “Double taxation treaty” means a bilateral treaty for the elimination of double taxation, whether concluded before the date of entry into force of this Instrument or on or after that date.
6. “Party” means:
  - (a) Any State for which this Instrument is in force pursuant to Article 15 (Entry into force); or

(b) Any jurisdiction in respect of which a declaration has been made in accordance with Article 8 (Territorial application of the Instrument).<sup>1</sup>

7. “Secretariat” means the secretariat established for the implementation of this Instrument in accordance with Article 12 (Conference of the Parties and secretariat).

8. “Schedule” means a schedule to this Instrument, and includes a schedule added after the entry into force of this Instrument in accordance with Article 13 (Additional schedules to this Instrument).

9. “Signatory” means a State or jurisdiction that has signed the Instrument but for which the Instrument is not yet in force.

10. “United Nations Model” means the United Nations Model Double Taxation Convention between Developed and Developing Countries as amended from time to time.

## **Article 2**

### **Purpose**

1. The purpose of this Instrument is to facilitate the amendment of bilateral double taxation treaties, whether concluded before the date of entry into force of this Instrument or on or after that date, in force between Parties to this Instrument.

2. The amendments to be facilitated by this Instrument reflect amendments to the United Nations Model that are made from time to time by the Committee of Experts.

## **PART II**

### **PROCEDURE AND ITS OPERATION**

## **Article 3**

### **Procedure established by this Instrument**

1. The procedure established by this Instrument for the amendment of double taxation treaties consists of the following elements:

(a) The framework for the facilitation of amendments to double taxation treaties, as provided for in this Instrument;

(b) The specific amendments provided for in each of the schedules;

(c) The amending protocols concluded between two or more Parties in the form prescribed by any such schedule.

2. For the purposes of the procedure established by this Instrument:

(a) Participation (whether by signature, ratification or in any other way) as a Signatory or Party to this Instrument indicates the willingness of that Signatory or Party to participate in the procedure set out in this Instrument, but does not impose on that Signatory or Party any binding obligation to make any of the amendments provided for in any of the schedules in respect of any of that Party’s double taxation treaties. Signature, ratification, [acceptance or approval] of this Instrument pursuant to Article 7 does not in any way restrict a Signatory or Party from amending any

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<sup>1</sup> This definition of “Parties” follows the approach taken in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The issue of Parties to the Instrument that are not independent States will need further discussion in the light of any established United Nations approach to the participation in international agreements of taxing jurisdictions that are not independent States in international law. The current text is a placeholder pending advice on this issue.

double taxation treaty to which it is a party through other means or procedures agreed between the Parties to that treaty.

(b) The amendment of a double taxation treaty provided for in a schedule shall only take effect after an amending protocol has entered into force between the parties to that double taxation treaty.

#### **Article 4**

##### **Standard procedure for matching Parties**

1. A Party shall as soon as possible, and in any event within two years, after signing this Instrument deposit with the Depository a list of its existing double taxation treaties in respect of which it is willing to consider applying the provisions of one or more schedules (referred to as its list of “covered tax treaties”). This list shall, for each listed double taxation treaty, identify the schedules that Party is willing to consider applying to that treaty. A Party may at any time amend its list of covered tax treaties and shall within six months after the addition of any additional schedule amend its list (or confirm to the secretariat that it does not intend to amend its list). The secretariat may, if requested to do so by a Party, assist that Party in the preparation of its list of covered tax treaties. Where a Party fails to provide a list of covered tax treaties in accordance with this paragraph, the secretariat may assist by preparing a draft list which it may propose to that Party for amendment, acceptance or rejection as that Party’s list of covered tax treaties.

2. Where a schedule contains an amendment that requires any terms or rates of taxes to be agreed in the amending protocol, the list of covered tax treaties shall also indicate the terms or rates of taxes on the basis of which that Party would be willing to conclude an amending protocol with the other Party to its double taxation treaties. The terms or rates of taxes may include alternative terms or a range of rates of taxes within which that Party may be willing to conclude an amending protocol.

3. A Party may if it so wishes include in its list of covered tax treaties any additional conditions that it would require to be satisfied before it would agree to apply the provisions of a particular schedule to any one or more of its covered tax treaties. These additional conditions may include, for example, a requirement that the other party to that double taxation treaty agrees to also apply the provisions of another schedule to that double taxation treaty.

4. Within three months of a Party depositing a list of its covered tax treaties (or amending such a list), the secretariat shall compare that list with the lists of covered tax treaties deposited by other Parties. Where the lists of two Parties match as respects identified schedules in respect of a double taxation treaty, the secretariat shall inform those Parties and assist them in concluding an amending protocol. In particular, the secretariat may or, where requested by one or both Parties, shall, prepare a draft amending protocol and submit it to the two Parties with a view to assisting agreement between them. In matching the lists of covered tax treaties, the secretariat shall take account of any additional conditions specified by a Party in accordance with paragraph 3 above.

#### **Article 5**

##### **Multiple amendments in an amending protocol**

1. Where two Parties agree that the amendments made by two or more schedules shall apply to the double taxation treaty between those Parties, they may conclude a single amending protocol giving effect to the amendments made by all those schedules. The secretariat may or, where requested by one or both Parties, shall, assist in preparing a single amending protocol in accordance with this paragraph.

2. Where more than two Parties agree that the same amendment or amendments contained in one or more schedules shall apply to all the double taxation treaties between all those Parties, they may conclude a multilateral amending protocol giving effect to that amendment or those amendments. The secretariat may or, where requested by one or more Parties, shall, assist in preparing a multilateral amending protocol in accordance with this paragraph.

### **Article 6** **Enhanced procedure for automatic matching and conclusion of an amending protocol**

1. When a Party deposits a list of covered tax treaties in accordance with Article 4 (Standard procedure for matching Parties), that Party may indicate on the list that it is willing for the enhanced procedure in this Article to apply to one or more of its double taxation treaties on that list. That Party shall, in addition to identifying the double taxation treaty, also include in the list all the information that would be required from that Party to complete an amending protocol giving effect to that schedule in respect of that double taxation treaty.

2. When the secretariat carries out the comparison process set out in Article 4 (Standard procedure for matching Parties) and identifies that two Parties have both indicated that they are willing to apply the enhanced procedure in this Article, the secretariat shall also compare the information specified by each Party in respect of that schedule. If the information supplied by both Parties matches (as defined in paragraph 3 below), then the secretariat shall, within one month from completion of the comparison by the secretariat, notify the two Parties of that matching and at the same time provide the Parties with a draft amending protocol completed in accordance with the information supplied by the Parties.

3. For the purposes of this Article, information matches if both Parties have supplied such information that would allow the completion of a binding amending protocol between those Parties. Where one or both Parties has indicated a range of rates or percentages at which they would be willing to agree an amending protocol, the rate or percentage shall be regarded as matched at the highest common level acceptable to both Parties.<sup>2</sup>

4. Where the secretariat has notified both Parties that the information they have supplied in their list of covered tax agreements has been matched in accordance with the procedure in this Article, then, subject to paragraph 5 below, the Parties shall be regarded as having concluded an amending protocol in the terms of the draft provided by the secretariat which shall have binding effect two months from the date on which the secretariat notifies the Parties in accordance with paragraph 2 above.

5. Where the secretariat has notified two Parties that the information they have supplied has been matched in accordance with this Article, either Party may, within one month of being so notified, serve notice to the secretariat and the other Party that it has decided not to conclude an amending protocol on those terms with the other Party.

6. Where the secretariat has notified two Parties that the information they have supplied has been matched, and neither Party has served a notice in accordance with paragraph 5 above, the secretariat shall inform the Depository that an amending

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<sup>2</sup> For example, if State A has indicated that it would agree to include article 12A of the United Nations Model at a rate in the range of 3 per cent to 5 per cent, and State B has indicated a range of 4 per cent to 7 per cent, the information would be matched at 5 per cent, being the highest common percentage acceptable to both States.

protocol has been concluded between the Parties. The Depository shall then issue a public notice containing the amending protocol concluded between the Parties.

7. Where the secretariat carries out the comparison process in accordance with this Article and the information provided by the two Parties does not match or some information is missing, the secretariat shall notify both Parties and shall then use its best endeavours to assist the Parties to amend the information they have supplied or to provide the missing information with a view to concluding an amending protocol.

### **PART III FINAL PROVISIONS**

#### **Article 7**

##### **Signature and ratification, acceptance or approval**

1. As at the [ ] day of [ ], this Instrument shall be open for signature [at the United Nations Office at Geneva] by all States.
2. This Instrument is subject to ratification, [acceptance or approval].

#### **Article 8**

##### **Territorial application of the Instrument**

Any State may, at the time of signature, when depositing its instrument of ratification, [acceptance or approval,] or at any later date, deposit a declaration specifying a jurisdiction for whose international relations it is responsible and to which this Instrument shall apply. This Instrument shall enter into force in respect of such a jurisdiction on the later of the date of entry into force of this Instrument for the State and the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of the declaration.

#### **Article 9**

##### **Reservations**

Reservations to this Instrument are not permitted.

#### **Article 10**

##### **Notifications**

1. Instruments of ratification, [acceptance or approval] shall be deposited with the Depository.
2. Except where the enhanced procedure in Article 6 applies, two or more Parties concluding an amending protocol shall each promptly deposit a signed copy of the amending protocol with the Depository.

#### **Article 11**

##### **Domestic procedure to give effect to this Instrument and amending protocols**

Each Signatory or Party to this Instrument shall undertake such procedure (if any) under its domestic or constitutional law as is required to give effect to this Instrument and to any amending protocol concluded by that Signatory or Party (including any amending protocol concluded under the enhanced procedure set out in Article 6).

## **Article 12**

### **Conference of the Parties and secretariat**

1. The Parties shall convene a Conference of the Parties for the purpose of taking any decisions or exercising any functions as may be required or appropriate under the provisions of this Instrument.
2. The Conference of the Parties shall, within six months of the entry into force of this Instrument, establish a secretariat to administer this Instrument. The secretariat shall consist of such number of Parties (being not less than five Parties) and such members of staff of the United Nations as the Conference of the Parties shall from time to time specify.
3. A meeting of the Conference of the Parties shall be convened at least once a year at such time and place as is notified to the Parties by the secretariat. At each meeting of the Conference of the Parties, the secretariat shall ensure that the agenda includes adequate time for Parties to discuss and complete the terms of amending protocols, in particular where the possibility of such an amending protocol has been identified by the matching procedure set out in article 4.
4. The Conference of the Parties shall be served by the Depository.
5. Any Party may request a meeting of the Conference of the Parties by communicating a request to the Depository. The Depository shall inform all Parties of any such request. Thereafter, the secretariat shall convene a meeting of the Conference of the Parties, provided that the request is supported by one third of the Parties, within six calendar months of the communication by the Depository of the request.

## **Article 13**

### **Additional schedules to this Instrument**

1. If the Committee of Experts adopts a substantive amendment to the United Nations Model after the date that this Instrument is opened for signature, the secretariat shall prepare a draft additional schedule to this Instrument accurately reflecting that amendment and shall submit the draft additional schedule to a meeting of the Conference of the Parties within one year of the adoption of the amendment by the Committee of Experts. The period of time shall commence from the date when the report of the Committee of Experts containing that amendment is adopted.
2. If a majority of Parties<sup>3</sup> present at a meeting of the Conference of the Parties approve the draft additional schedule, then that draft additional schedule shall immediately become a schedule to this Instrument.
3. Subject to Article 11 and the requirements of the domestic or constitutional law of a Signatory or Party to this Instrument, the adoption of an additional schedule shall not require ratification.

## **Article 14**

### **Amendment**

1. Any Party may propose an amendment to this Instrument, including an amendment to Article 14 with the exception of paragraph 2 below, or to a schedule,

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<sup>3</sup> It is open for discussion whether this should be decided by a majority or whether it should be sufficient if, say, five or more Parties agree to the additional schedule. As the addition of a schedule has no binding effect, the support of five or more Parties may be sufficient to add a schedule following an amendment by the Committee of Experts.

subject to paragraph 2 below, by submitting the proposed amendment to the Depository.

2. A substantive amendment to a schedule as respects a provision of the United Nations Model contained therein may not be made unless the Committee of Experts has previously made an amendment to that provision, and the amendment to the schedule shall accurately reflect the amendment made by the Committee of Experts.

3. A meeting of the Conference of the Parties shall be convened to consider the proposed amendment in accordance with Article 12 (Conference of the Parties and secretariat).

4. An amendment to this Instrument shall be adopted by a vote of two thirds of the Parties present and voting at the meeting convened for the purpose of considering that amendment.

5. An amendment shall enter into force for those Parties that have ratified it ninety days after a majority of Parties have deposited instruments of ratification of the amendment, and, if later for any Party, ninety days after that Party has deposited its instrument of ratification of the amendment (but shall not enter into force for any Party to the original Instrument that has not ratified the amendment).

6. Any Party that ratifies the Instrument after an amendment has been adopted in accordance with paragraph 4 above shall, failing an expression of a different intention by that State: (a) be considered as a Party to the Instrument as amended; and (b) be considered as a Party to the unamended Instrument in relation to any Party to the Instrument not bound by the amendment.

#### **Article 15**

##### **Entry into force**

1. This Instrument shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the [fifth] instrument of ratification [, acceptance or approval].

2. For each Signatory ratifying [, accepting or approving] this Instrument after the deposit of the fifth instrument of ratification, acceptance or approval, the Instrument shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by such Signatory of its instrument of ratification [, acceptance or approval].

#### **Article 16**

##### **Entry into effect of an amending protocol**

An amendment to a double taxation treaty which is made by an amending protocol [(including any amending protocol concluded under the enhanced procedure set out in Article 6)] shall have effect in each Party that has concluded that amending protocol on the dates specified therein.

#### **Article 17**

##### **Withdrawal and termination**

1. Any Party may, at any time, withdraw from this Instrument by means of a notification addressed to the Depository.

2. Withdrawal pursuant to paragraph 1 above shall become effective on the date of the receipt of the notification by the Depository.

3. Where this Instrument has entered into force with respect to all parties to a double taxation treaty and an amending protocol has been concluded between those



Parties before the date on which a Party's withdrawal becomes effective, that double taxation treaty shall remain as amended by that amending protocol notwithstanding the withdrawal of that Party.

4. Where this Instrument has entered into force but as a result of the withdrawal of Parties pursuant to this Article there are five or fewer Parties, this Instrument shall cease to have effect and terminate from the first day of the calendar year immediately following the withdrawal of the Party that results in the number of remaining Parties being five or fewer. Where this Instrument has entered into force with respect to all parties to a double taxation treaty and an amending protocol has been concluded between those Parties before the date on which this Instrument terminates, that double taxation treaty shall remain as amended by that amending protocol notwithstanding the termination of this Instrument.

### **Article 18 Depository**

1. The Depository shall be the depository of this Instrument and any amendments thereto.

2. The Depository shall notify the Parties and Signatories within one calendar month of:

(a) Any signature pursuant to Article 7 (Signature and ratification, acceptance or approval);

(b) The deposit of any instrument of ratification, acceptance or approval pursuant to Article 7 (Signature and ratification, acceptance or approval);

(c) Any notification pursuant to Article 10 (Notifications);

(d) Any proposed amendment to this Instrument or its schedules pursuant to Article 14 (Amendment) and the adoption of any such amendment;

(e) Any withdrawal from this Instrument pursuant to Article 17 (Withdrawal and termination);

(f) Any other communication related to this Instrument.

3. The Depository shall maintain publicly available lists of Parties and notifications made by Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Instrument.

DONE at [ ], the day of , in [all official languages of the United Nations], all texts being equally authentic, in a single copy which shall be deposited in the archives of the United Nations.

## Schedule 1 to the Fast-Track Instrument Pension funds

1. Schedule 1 makes provision for giving effect to the amendments to the United Nations Model to expressly include pension funds within the scope of double taxation treaties.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol makes provision for the express inclusion of pension funds within the scope of double taxation treaties.

**Protocol Amending the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 1 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

### Article 1 Definition of a “recognized pension fund”

In Article [ ] (General definitions) of the Convention, the following wording shall be included in the list of defined terms:

“<sup>[1]</sup>. “recognized pension fund” of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:

(a) That is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(b) That is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements to which subparagraph (a) applies.”

### [Article 2<sup>2</sup> Modification of the definition of a person

Article [ ] of the Convention (Definition of a person) shall be modified by the inclusion of the words “and a recognized pension fund of that State”.]

<sup>1</sup> Number or letter to be in accordance with the numbering or lettering of the paragraph into which this wording is inserted.

<sup>2</sup> This is an optional provision. If the two Parties decide not to include it, the subsequent articles should be renumbered accordingly.

**Article 3****Modification of the definition of a resident**

Article [ ] of the Convention (Definition of a resident) shall be modified by the inclusion of the words “and a recognized pension fund of that State”.

**Article 4****Modification of the provisions on entitlement to benefits**

Article [ ] of the Convention (Entitlement to benefits) shall be modified by the inclusion in the definition of “qualified persons” of “a recognized pension fund”.

**Article 5****Entry into force and effect**

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

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For the Government of [ ]:

.....

**[Article 5<sup>3</sup>****Entry into force and effect**

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>4</sup>

<sup>3</sup> Alternative text where the automated procedure applies.

<sup>4</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

## Schedule 2 to the Fast-Track Instrument Gains in relation to natural resources and offshore indirect capital gains

1. Schedule 2 makes provision for giving effect to the amendments to the United Nations Model relating to the taxation of gains in relation to natural resources and offshore indirect capital gains.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains amendments relating to the taxation of gains in relation to natural resources and offshore indirect capital gains.

### Protocol Amending the Convention between the Government of [ ] and the Government of [ ] [for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ] on [ ]

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 2 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

#### Article 1

#### Amendment of the capital gains article of the relevant double taxation treaty in respect of the taxation of natural resources

Article [ ] of the Convention shall be amended by inserting the following  
wording (and the subsequent paragraphs shall be renumbered accordingly):

“(1). Gains derived by a resident of a Contracting State from the alienation of a right  
granted under the law of the other Contracting State which allows the use of resources  
that are naturally present in that other State and that are under the jurisdiction of that  
other State may be taxed in that other State.”

#### Article 2

#### Amendment of the capital gains article of the relevant double taxation treaty in respect of the taxation of indirect disposals

Article [ ] of the Convention shall be amended by inserting the following  
wording [in place of paragraph [ ] of that Article<sup>2</sup>] (and the subsequent paragraphs  
shall be renumbered accordingly):

“[<sup>3</sup>]. Subject to paragraphs [<sup>4</sup>] and [<sup>5</sup>], gains derived by a resident of a  
Contracting State from the alienation of shares of a company, or comparable

<sup>1</sup> Number or letter to be in accordance with the numbering or lettering of the paragraph into which this wording is inserted.

<sup>2</sup> This additional wording to be used where the wording of the amendment replaces an existing paragraph of the Convention.

<sup>3</sup> Number or letter to be in accordance with the numbering or lettering of the paragraph into which this wording is inserted.

<sup>4</sup> Number to be agreed between the Parties to the amending protocol.

<sup>5</sup> Number to be agreed between the Parties to the amending protocol.

interests of an entity, such as interests in a partnership or trust, may be taxed in the other Contracting State if:

(a) The alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least [<sup>6</sup>] per cent of the capital of that company or entity; and

(b) At any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from:

(i) A property, any gain from which would have been taxable in that other State in accordance with the preceding provisions of this Article if that gain had been derived by a resident of the first-mentioned State from the alienation of that property at that time; or

(ii) Any combination of property referred to in subparagraph (i).

### Article 3

#### Adjustment to the paragraphs referred to in the capital gains article

Paragraph [ ] of Article [ ] of the Convention (which applies to gains other than those referred to in specified paragraphs of the Article) shall be amended by the inclusion in the list of specified paragraphs of references to the paragraphs inserted by Article 2 and 3 above.

### Article 4

#### Entry into force and effect

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) In [ ] on the [ ];

(b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [ In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

<sup>6</sup> Percentage to be agreed between the Parties to the amending protocol.

**[Article 4  
Entry into force and effect<sup>7</sup>**

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>8</sup>

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<sup>7</sup> Alternative text where the automated procedure applies.

<sup>8</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

### **Schedule 3 to the Fast-Track Instrument Fees for technical services**

1. Schedule 3 makes provision for giving effect to the amendments to the United Nations Model relating to the taxation of fees for technical services.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains amendments relating to the taxation of fees for technical services.

**Protocol Amending the Convention between the Government of [ ] and the  
Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 3 of the Fast-Track  
Instrument,

Have agreed as follows:

**Article 1A<sup>1</sup>  
Amendment of the relevant double taxation treaty in respect of fees for  
technical services**

The following Article shall be inserted into the Convention after existing  
Article [ ]:

**“Article [ ]  
Fees for technical services**

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, notwithstanding the provisions of Article [ <sup>2</sup> ] and subject to the provisions of Articles [ <sup>3</sup> ], fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed [ <sup>4</sup> ] per cent of the gross amount of the fees.
3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
  - (a) To an employee of the person making the payment;

<sup>1</sup> Article 1B contains an alternative form of wording. Parties should indicate in their list of covered tax agreements whether they propose to include Article 1A or Article 1B.

<sup>2</sup> Number to be agreed between the parties to the amending protocol.

<sup>3</sup> Number to be agreed between the parties to the amending protocol.

<sup>4</sup> Percentage to be included in the list of covered tax agreements and to be agreed between the two parties to the amending protocol.

(b) For teaching in an educational institution or for teaching by an educational institution; or

(c) By an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, [or performs in the other Contracting State independent personal services from a fixed base situated in that other State,<sup>5</sup>] and the fees for technical services are effectively connected with:

(a) Such permanent establishment [or fixed base]; or

(b) Business activities referred to in paragraph 1 (c) of Article [<sup>6</sup>].

In such cases, the provisions of Article [<sup>7</sup>] or Article [<sup>8</sup>], as the case may be, shall apply.

5. For the purposes of this Article, subject to paragraph 6 below, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment [or a fixed base] in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment [or fixed base].

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State through a permanent establishment situated in that other State [or performs independent personal services through a fixed base situated in that other State] and such fees are borne by that permanent establishment [or fixed base].

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.”

#### **Article 1B<sup>9</sup>**

#### **Amendment of the relevant double taxation treaty in respect of “fees for services”<sup>10</sup>**

The following Article shall be inserted into the Convention after existing Article [ ]:

<sup>5</sup> This wording, and other wording in square brackets referring to a “fixed base”, to be deleted where the Convention makes no reference to fixed base.

<sup>6</sup> Number to be agreed between the parties to the amending protocol.

<sup>7</sup> Number to be agreed between the parties to the amending protocol.

<sup>8</sup> Number to be agreed between the parties to the amending protocol.

<sup>9</sup> Alternative wording.

<sup>10</sup> This reflects the provisions of paragraph 26 of the commentary to Article 12A of the United Nations Model.



**“Article [ ]**  
**Fees for services**

1. Fees for services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article [ <sup>11</sup> ] and subject to the provisions of Articles [ <sup>12</sup> ], fees for services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed [ <sup>13</sup> ] per cent of the gross amount of the fees.

3. The term “fees for services” as used in this Article means any payment in consideration for any service, unless the payment is made:

- (a) To an employee of the person making the payment;
- (b) For teaching in an educational institution or for teaching by an educational institution; or
- (c) By an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for services arise through a permanent establishment situated in that other State, [or performs in the other Contracting State independent personal services from a fixed base situated in that other State,] and the fees for services are effectively connected with:

- (a) Such permanent establishment [or fixed base]; or
- (b) Business activities referred to in paragraph 1 (c) of Article [ <sup>14</sup> ].

In such cases, the provisions of Article [ <sup>15</sup> ] or Article [ <sup>16</sup> ], as the case may be, shall apply.

5. For the purposes of this Article, fees for services shall be deemed to arise in a Contracting State if:

- (a) The services are performed in that State; or
- (b) The payer is a resident of that State and the fees are paid to a closely related enterprise or person unless the payer carries on business in the other Contracting State through a permanent establishment situated in that State [or performs independent personal services through a fixed base situated in the other Contracting State] and such fees are borne by that permanent establishment [or fixed base]; or
- (c) The payer has in that State a permanent establishment [or a fixed base] in connection with which the obligation to pay the fees for services was incurred, and such fees are borne by such permanent establishment [or fixed base], and are paid to a closely related enterprise or person.

6. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall

<sup>11</sup> Number to be agreed between the parties to the amending protocol.

<sup>12</sup> Number to be agreed between the parties to the amending protocol.

<sup>13</sup> Percentage to be included in the list of covered tax agreements and to be agreed between the two Parties to the amending protocol.

<sup>14</sup> Number to be agreed between the Parties to the amending protocol.

<sup>15</sup> Number to be agreed between the Parties to the amending protocol.

<sup>16</sup> Number to be agreed between the Parties to the amending protocol.

be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise. For the purposes of this Article, an individual shall be a closely related person with respect to another individual if the individual is related to that other individual by blood, marriage or adoption.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services, or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

## **Article 2**

### **Consequential amendments**

The Convention shall be further amended (as a consequence of the insertion effected by Article 1) as follows:

(a) In Article [ ] (Elimination of double taxation by exemption<sup>17</sup>), the number of the Article inserted by this amending protocol shall be added to the numerical list of articles in paragraphs (2) and (4);

(b) In Article [ ] (Non-discrimination<sup>18</sup>), the wording "or paragraph 7 of Article [19]" and "fees for [technical] services" shall be inserted into the paragraph relating to deductions;<sup>20</sup>

(c) In Article [ ] (Entitlement to benefits<sup>21</sup>), the number of the Article inserted by this amending protocol shall be added to the numerical list of articles in the definition of "equivalent beneficiary".<sup>22</sup>

## **Article 3**

### **Entry into force and effect**

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) In [ ] on the [ ];

(b) In [ ] on the [ ].

<sup>17</sup> The equivalent of Article 23A of the United Nations Model.

<sup>18</sup> The equivalent of Article 24 of the United Nations Model.

<sup>19</sup> The number of the Article inserted by this protocol.

<sup>20</sup> The equivalent of Article 24(4) of the United Nations Model; the additional wording shall be inserted in the equivalent positions to that paragraph in the United Nations Model.

<sup>21</sup> The equivalent of Article 29 of the United Nations Model.

<sup>22</sup> The equivalent of Article 29(7)(e)(i)(B)(1) of the United Nations Model.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ],  
in two original copies in the English language [in the English and [ ] languages (a  
copy of the text in the [ ] language to be agreed between the Parties), both texts  
being equally authentic.] [ In case of divergence between the two texts, the English  
text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

### **[Article 3<sup>23</sup>**

#### **Entry into force and effect**

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>24</sup>

<sup>23</sup> Alternative text where the automated procedure applies.

<sup>24</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

## Schedule 4 to the Fast-Track Instrument Income from automated digital services

1. Schedule 4 makes provision for giving effect to the amendments to the United Nations Model relating to the taxation of income from automated digital services.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains amendments relating to the taxation of income from automated digital services.

**Protocol Amending the Convention between the Government of [ ] and the  
Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 4 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

### Article 1

#### Amendment of the relevant double taxation treaty in respect of the taxation of automated digital services

The following Article shall be inserted into the Convention after existing  
Article [ ]:

#### “Article [ ]

#### Income from automated digital services

1. Income from automated digital services arising in a Contracting State, underlying payments for which are made to a resident of the other Contracting State, may be taxed in that other State.
2. However, subject to the provisions of Article [ <sup>1</sup> ] and notwithstanding the provisions of Article [ <sup>2</sup> ], income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed [ <sup>3</sup> ] per cent

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<sup>1</sup> Number to be agreed between the Parties to the amending protocol.

<sup>2</sup> Number to be agreed between the Parties to the amending protocol.

<sup>3</sup> Percentage to be agreed between the Parties to the amending protocol.

of the gross amount of the payments underlying the income from automated digital services.<sup>4</sup>

[3<sup>5</sup>. The provisions of paragraph 2 shall not apply if the beneficial owner of the income from automated digital services, being a resident of a Contracting State, requests the other Contracting State where such income arises, to subject its qualified profits from automated digital services for the fiscal year concerned to taxation at the tax rate provided for in the domestic laws of that State. If the beneficial owner so requests, subject to the provisions of Article [6] and notwithstanding the provisions of Article [7], the taxation by that Contracting State shall be carried out accordingly. For the purposes of this paragraph, the qualified profits shall be 30 per cent of the amount resulting from applying the profitability ratio of that beneficial owner's automated digital services business segment to the gross annual revenue from automated digital services derived from the Contracting State where such income arises. Where segmental accounts are not maintained by the beneficial owner, the overall profitability ratio of the beneficial owner will be applied to determine qualified profits. However, where the beneficial owner belongs to a multinational enterprise group, the profitability ratio to be applied shall be that of the business segment of the

<sup>4</sup> Alternative wording (reflecting the provisions of paragraph 26 of the commentary to Article 12B of the United Nations Model):

Where both Parties so specify in their list of covered tax treaties, the following wording shall apply in place of the wording in paragraph 2:

"2. However, subject to the provisions of Article 8 and notwithstanding the provisions of Article 14, income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the income from automated digital services arising in a Contracting State may be taxed in the Contracting State in which it arises only if:

(a) The worldwide revenue derived by the beneficial owner of the income during the fiscal year concerned is an amount exceeding [ ]; and

(b) The revenue from automated digital services derived by the beneficial owner from the Contracting State during the fiscal year concerned is an amount exceeding [ ]; and the tax so charged shall not exceed [ ] per cent of the gross amount of the income from automated digital services arising in the first-mentioned State."

<sup>5</sup> Alternative wording (reflecting the provisions of paragraph 48 of the commentary to Article 12B of the United Nations Model):

Where both Parties so specify in their list of covered tax treaties, the following wording shall apply in place of the wording in paragraph 3:

"3. The provisions of paragraph 2 shall not apply if the beneficial owner of the income from automated digital services, being a resident of a Contracting State, requests the other Contracting State where such income arises to subject its qualified profits from automated digital services for the fiscal year concerned to taxation at the tax rate provided for in the domestic laws of that State. If the beneficial owner so requests, subject to the provisions of Article 8 and notwithstanding the provisions of Article 14, the taxation by that Contracting State shall be carried out accordingly. For the purposes of this paragraph, the qualified profits shall be [ ] per cent of the amount resulting from applying to the gross annual revenue from automated digital services derived from the Contracting State where such income arises:

(a) The automated digital services business segment profitability ratio of the beneficial owner where segmental accounts are maintained;

(b) The overall profitability ratio of the beneficial owner where segmental accounts are not maintained;

deducted by [ ] per cent deemed return on routine functions for providing the automated digital services.

<sup>6</sup> Number to be agreed between the Parties to the amending protocol.

<sup>7</sup> Number to be agreed between the Parties to the amending protocol.

group relating to the income covered by this Article, or of the group as a whole in case segmental accounts are not maintained by the group, provided such profitability ratio of the multinational enterprise group is higher than the aforesaid profitability ratio of the beneficial owner. Where the segmental profitability ratio or, as the case may be, the overall profitability ratio of the multinational enterprise group to which the beneficial owner belongs is not available to the Contracting State in which the income from automated digital services arises, the provisions of this paragraph shall not apply; in such a case, the provisions of paragraph 2 shall apply.]

4. For the purposes of paragraph 3, “multinational enterprise group” means any “group” that includes two or more enterprises, the tax residence for which is in different jurisdictions. Further, for the purposes of paragraph 3, the term “group” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public stock exchange.

5. The term “automated digital services” as used in this Article means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.

6. The term “automated digital services” includes especially:

- (a) Online advertising services;
- (b) Supply of user data;
- (c) Online search engines;
- (d) Online intermediation platform services;
- (e) Social media platforms;
- (f) Digital content services;
- (g) Online gaming;
- (h) Cloud computing services; and
- (i) Standardized online teaching services.

7. The provisions of this Article shall not apply if the payments underlying the income from automated digital services qualify as “royalties” [or “fees for technical services”<sup>8</sup>] under Article [9] or Article [10] as the case may be.

8. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the income from automated digital services, being a resident of a Contracting State, carries on business in the other Contracting State in which the income from automated digital services arises through a permanent establishment situated in that other State, [or performs in the other Contracting State independent personal services from a fixed base situated in that other State,<sup>11</sup>] and the income from automated digital services is effectively connected with:

- (a) Such permanent establishment [or fixed base]; or

<sup>8</sup> This wording, and other wording in square brackets referring to “fees for technical services”, to be deleted where the Convention contains no provision relating to fees for technical services.

<sup>9</sup> Number to be agreed between the Parties to the amending protocol.

<sup>10</sup> Number to be agreed between the Parties to the amending protocol.

<sup>11</sup> This wording, and other wording in square brackets referring to a “fixed base”, to be deleted where the Convention makes no reference to fixed base.

(b) Business activities referred to in paragraph 1 (c) of Article [12].

In such cases, the provisions of Article [13] or Article [14], as the case may be, shall apply.

9. For the purposes of this Article and subject to paragraph 10, income from automated digital services shall be deemed to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State or if the person making the underlying payments for the automated digital services, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment [or a fixed base] in connection with which the obligation to make the payments was incurred, and such payments are borne by the permanent establishment [or fixed base].

10. For the purposes of this Article, income from automated digital services shall be deemed not to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State which carries on business in the other Contracting State through a permanent establishment situated in that other State [or performs independent personal services through a fixed base situated in that other State] and such underlying payments towards automated digital services are borne by that permanent establishment [or fixed base].

11. Where, by reason of a special relationship between the payer and the beneficial owner of the income from automated digital services or between both of them and some other person, the amount of the payments underlying such income, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments underlying such income from automated digital services shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.”

## Article 2 Consequential amendments

The Convention shall be further amended (as a consequence of the insertion effected by Article 1) as follows:

(a) In Article [ ] (Elimination of double taxation by exemption),<sup>15</sup> the number of the Article inserted by this amending protocol shall be added to the numerical list of articles in paragraphs (2) and (4);

(b) In Article [ ] (Non-discrimination<sup>16</sup>), the wording “or paragraph 11 of Article [17]” and “payments underlying income from automated digital services” shall be inserted into the paragraph relating to deductions;<sup>18</sup>

<sup>12</sup> Number to be agreed between the Parties to the amending protocol.

<sup>13</sup> Number to be agreed between the Parties to the amending protocol.

<sup>14</sup> Number to be agreed between the Parties to the amending protocol.

<sup>15</sup> The equivalent of Article 23A of the United Nations Model.

<sup>16</sup> The equivalent of Article 24 of the United Nations Model.

<sup>17</sup> The number of the Article inserted by this protocol.

<sup>18</sup> The equivalent of Article 24(4) of the United Nations Model; the additional wording shall be inserted in the equivalent positions to that paragraph in the United Nations Model.

(c) In Article [ ] (Entitlement to benefits<sup>19</sup>), the number of the Article inserted by this amending protocol shall be added to the numerical list of articles in the definition of “equivalent beneficiary”.<sup>20</sup>

### Article 3 Entry into force and effect

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [ In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

### [Article 3<sup>21</sup> Entry into force and effect

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>22</sup>

<sup>19</sup> The equivalent of Article 29 of the United Nations Model.

<sup>20</sup> The equivalent of Article 29(7)(e)(i)(B)(1) of the United Nations Model.

<sup>21</sup> Alternative text where the automated procedure applies.

<sup>22</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.



## Schedule 5 to the Multilateral Fast-Track Instrument Arbitration

1. Schedule 5 makes provision for giving effect to the amendments to the United Nations Model relating to arbitration of disputes.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains amendments relating to the arbitration of disputes.

**Protocol Amending the Convention between the Government of [ ] and the  
Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 5 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

### Article 1A<sup>1</sup>

#### Inclusion of provision for arbitration of disputes within the relevant double taxation treaty

The following paragraph shall be inserted into the Convention at the end of  
Article [ ]:

“([<sup>2</sup>]). Where,

(a) Under paragraph 1, a person has presented a case to the competent  
authority of a Contracting State on the basis that the actions of one or both of  
the Contracting States have resulted for that person in taxation not in accordance  
with the provisions of this Convention; and

(b) The competent authorities are unable to reach an agreement to  
resolve that case pursuant to paragraph 2 within three years from the  
presentation of the case to the competent authority of the other Contracting  
State,

any unresolved issues arising from the case shall be submitted to arbitration if  
either competent authority so requests. The person who has presented the case  
shall be notified of the request. These unresolved issues shall not, however, be  
submitted to arbitration if a decision on these issues has already been rendered  
by a court or administrative tribunal of either State. The arbitration decision  
shall be binding on both States and shall be implemented notwithstanding any  
time limits in the domestic laws of these States unless both competent  
authorities agree on a different solution within six months after the decision has  
been communicated to them or unless a person directly affected by the case does  
not accept the mutual agreement that implements the arbitration decision. The

<sup>1</sup> Article 1B contains an alternative form of wording. Parties should indicate in their list of  
covered tax agreements whether they propose to include Article 1A or Article 1B.

<sup>2</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.”

**[Article 1B<sup>3</sup>**

**Inclusion of provision for arbitration of disputes within the relevant double taxation treaty: voluntary arbitration**

The following paragraph shall be inserted into the Convention at the end of Article [ ]:

“([<sup>4</sup>]). If the competent authorities are unable to resolve by mutual agreement a case pursuant to paragraph 2, the case, may, if both competent authorities and the person who has presented the case pursuant to paragraph 1 agree, be submitted for arbitration, provided any person directly affected by the case agrees in writing to be bound by the decision of the arbitration board. If the competent authorities are unable to resolve by mutual agreement a difficulty or a doubt pursuant to paragraph 3, the difficulty or doubt may also, if both competent authorities agree, be submitted for arbitration. The decision of the arbitration board in a particular case shall be binding on the Contracting States with respect to that case. Where a general difficulty of interpretation or application is submitted to arbitration, the decision of the arbitration board shall be binding on the Contracting States as long as the competent authorities do not agree to modify or rescind the decision. The competent authorities shall by mutual agreement settle the procedures for such an arbitration board.”]

**Article 2**

**Entry into force and effect**

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

<sup>3</sup> Alternative wording.

<sup>4</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

**[Article 2<sup>5</sup>**  
**Entry into force and effect**

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>6</sup>

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<sup>5</sup> Alternative text where the automated procedure applies.

<sup>6</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

## Schedule 6 to the Multilateral Fast-Track Instrument

### Subject to tax rule

1. Schedule 6 makes provision for giving effect to the amendments to the United Nations Model to provide for a subject to tax rule.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains an amendment to provide for a subject to tax rule:

**Protocol Amending the Convention between the Government of [ ] and the  
Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 6 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

#### Article 1

##### Inclusion of a subject to tax rule

The following paragraph shall be inserted into the Convention at the end of  
Article [ ]:

“[<sup>1</sup>]. (a) This Convention shall not affect the taxation by a Contracting State  
of any income arising in that State and derived by a resident of the other  
Contracting State if that income is subject to a low level of taxation in that other  
State within the meaning of subparagraph (b).

(b) Income is subject to a low level of taxation in that other State if:

(i) It is subject to a statutory tax rate of [<sup>2</sup>] per cent or less; or

(ii) It is subject to a statutory tax rate higher than the rate set out in  
subparagraph (i) but the beneficial owner of the income is entitled to a  
special exemption, exclusion or reduction that is linked directly to the  
income or the entity receiving it so that the amount of tax paid in that other  
State with respect to such income is less than the amount of tax that would  
be imposed if the tax rate set out in subparagraph (i) were applied to such  
income without regard to such exemption, exclusion or reduction.

(c) Subparagraph (a) will not apply to income that:

(i) [<sup>3</sup>].”

<sup>1</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

<sup>2</sup> Percentage to be agreed between the Parties to the amending protocol.

<sup>3</sup> Exceptions to the operation of the subject to tax rule are to be agreed between the Parties to the  
amending protocol.

## Article 2

### Entry into force and effect

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) In [ ] on the [ ];

(b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

## [Article 2<sup>4</sup>

### Entry into force and effect

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

(a) In [ ] on the [ ];

(b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>5</sup>

<sup>4</sup> Alternative text where the automated procedure applies.

<sup>5</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

## Schedule 7 to the Multilateral Fast-Track Instrument

### Capital gains deriving from the value of immoveable property

1. Schedule 7 makes provision for giving effect to the amendments to the United Nations Model to provide for the taxation of capital gains deriving from the value of immoveable property.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains an amendment to provide for the taxation of capital gains deriving from the value of immoveable property:

**Protocol Amending the Convention between the Government of [ ] and the Government of [ ] [for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and the Government of [ ] [for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ] on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 7 of the United Nations Fast-Track Instrument,

Have agreed as follows:

#### Article 1

##### Inclusion of a provision on gains deriving from the value of immoveable property

Article [ ] of the Convention shall be amended by the inclusion of the following paragraphs [in place of paragraphs [( ) and ( )] [after paragraph [( )]]<sup>1</sup> (and the subsequent paragraphs shall be renumbered accordingly):

“[(<sup>2</sup>)]. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article [ ], situated in that other State.

[(<sup>3</sup>)]. Gains, other than those to which paragraph [( )] applies, derived by a resident of a Contracting State from the alienation of shares of a company, or comparable interests, such as interests in a partnership or trust, which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least [<sup>4</sup>] per cent of the capital of that company or entity.”

<sup>1</sup> This contains alternative wording for situations where this paragraph replaces an existing paragraph or is entirely new.

<sup>2</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

<sup>3</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

<sup>4</sup> Percentage to be agreed between the parties to the amending protocol.

## Article 2

### Adjustment to the paragraphs referred to in the capital gains article

Paragraph [ ] of Article [ ] of the Convention (which applies to gains other than those referred to in specified paragraphs of the Article) shall be amended by the inclusion in the list of specified paragraphs of references to the paragraphs inserted by Article 1 above.

## Article 3

### Entry into force and effect

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [ In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

## [Article 3

### Entry into force and effect<sup>5</sup>

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either Party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>6</sup>

<sup>5</sup> Alternative text where the automated procedure applies.

<sup>6</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.

## Schedule 8 to the Multilateral Fast-Track Instrument Services permanent establishments

1. Schedule 8 makes provision for giving effect to the amendments to the United Nations Model relating to services permanent establishments.
2. In accordance with the provisions of the Fast-Track Instrument, the following draft amending protocol contains an amendment relating to services permanent establishments.

**Protocol Amending the Convention between the Government of [ ] and the  
Government of [ ] [for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital]  
signed at [ ] on [ ]**

The Government of [ ] and the Government of [ ],

Desiring to amend the Convention between the Government of [ ] and  
the Government of [ ] [for the Avoidance of Double Taxation and the Prevention  
of Fiscal Evasion with Respect to Taxes on Income and on Capital] signed at [ ]  
on [ ] (hereinafter referred to as “the Convention”) and

Desiring to give effect to the provisions of Schedule 8 of the United Nations  
Fast-Track Instrument,

Have agreed as follows:

### Article 1A<sup>1</sup>

#### Inclusion of a provision on services permanent establishments

Article [ ] of the Convention shall be amended by the inclusion of the following paragraph [in place of paragraph [( )] [after paragraph [( )] (and the subsequent paragraphs shall be renumbered accordingly)];<sup>2</sup>

“[(<sup>3</sup>)]. The term “permanent establishment” also encompasses:

(a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than [<sup>4</sup>] months;

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.”

<sup>1</sup> Article 1B contains an alternative form of wording. Parties should indicate in their list of covered tax agreements whether they propose to include Article 1A or Article 1B.

<sup>2</sup> This contains alternative wording for situations where this paragraph replaces an existing paragraph or is entirely new.

<sup>3</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

<sup>4</sup> Number of months to be agreed by the Parties to the amending protocol.



**[Article 1B<sup>5</sup>****Inclusion of a provision on services permanent establishments**

Article [ ] of the Convention shall be amended by the inclusion of the following paragraph [in place of paragraph [( )] [after paragraph [( )] (and the subsequent paragraphs shall be renumbered accordingly)]:<sup>6</sup>

“[(<sup>7</sup>)]. The term “permanent establishment” also encompasses:

(a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than [<sup>8</sup>] months;

(b) The furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days within any 12-month period commencing or ending in the fiscal year concerned;

(c) For an individual, the performing of services in a Contracting State by that individual, but only if the individual’s stay in that State is for a period or periods aggregating more than 183 days within any 12-month period commencing or ending in the fiscal year concerned.”]

**Article 2****Entry into force and effect**

Each of the Parties shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this protocol. The protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) In [ ] on the [ ];

(b) In [ ] on the [ ].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this amending protocol.

DONE at [ ], the [ ] day of [ ], in [ ], in two original copies in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic.] [ In case of divergence between the two texts, the English text shall be the operative one].

For the Government of [ ]:

.....

For the Government of [ ]:

.....

<sup>5</sup> Alternative wording.

<sup>6</sup> This contains alternative wording for situations where this paragraph replaces an existing paragraph or is entirely new.

<sup>7</sup> Number to be inserted according to the consecutive numbering of the paragraphs of this Article.

<sup>8</sup> Number of months to be agreed by the Parties to the amending protocol.

**[Article 2  
Entry into force and effect<sup>9</sup>**

Where both of the Parties have indicated that Article 6 of the Fast-Track Instrument (Enhanced procedure) shall apply, this protocol shall enter into force two months after the date on which the secretariat notifies the Parties in accordance with that Article (unless within one month either party notifies the secretariat and the other Party that it does not accept to be bound by this protocol). This protocol shall thereupon have effect:

- (a) In [ ] on the [ ];
- (b) In [ ] on the [ ].

This protocol is concluded in the English language [in the English and [ ] languages (a copy of the text in the [ ] language to be agreed between the Parties), both texts being equally authentic. In case of divergence between the two texts, the English/[ ] language text shall be the operative one].<sup>10]</sup>

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<sup>9</sup> Alternative text where the automated procedure applies.

<sup>10</sup> This is alternative wording where the amending protocol is concluded in two (or more) languages.