Committee of Experts on International Cooperation in Tax Matters

Twenty-sixth session, New York, 27-30 March 2023

CRP 18 - Update of the Manual for the Negotiation of Bilateral Tax Treaties

Interventions by the South Centre

- Paragraph 74 - South Centre suggests that while negotiating tax treaties, developing countries must put an emphasis on aligning their position as per the UN Model DTC 2021 **only** as it predominantly advocates source-based taxation principle and contains several such provisions which are not incorporated in the OECD MTC 2017. That being said, developing countries are required to be equally cognisant of the fact that the treaty partner may not be inclined to agree with all the source-based rules, as provided in the UN Model DTC 2021.
- Paragraph 189, 190 – Apart from conveying through diplomatic channels that the country's internal requirements or procedures for the entry into force of the treaty have been satisfied, the competent authorities may follow-up over e-mail as well, in order to ensure that this crucial information is inadvertently not delayed in transit through diplomatic channels. At the same time, it may be clarified that the date of conveyance through diplomatic channels shall prevail for the purposes of entry into force of the treaty vis-à-vis the competent authorities' communication over e-mail.
- Paragraph 269 (second sentence) – Replace "Unlike paragraph (b) of Article 5 of the UN Model" with "Unlike paragraph **3(b)** of Article 5 of the UN Model".
- Paragraph 336 - Edits made in this paragraph may be re-drafted to convey the intended meaning.
- Paragraph 402 – Example – In the table, under column for State Z, tax computed for State Z should be 25 and not 5.
- Paragraph 451 (third dot) in addition to Tax Sparing – Paragraphs 682 to 689 - Since the treaty provisions are an outcome of negotiated positions, there can be instances of *quid pro quo* granted by developing countries when certain provisions, for example, tax sparing provisions are incorporated in treaties to support investments in developing countries where MNEs avail tax exemptions. The *quid pro quo* may take the shape of stricter PE provisions or reduced withholding tax rates in tax treaties or other measures as treaty partners may deem appropriate. However, it is now observed that with the advent of GloBE Rules under Pillar Two, subsidiaries that avail tax exemptions in developing countries may end up having an ETR below 15% and thus, would be exposed to payment of IIR at the UPE level. With this, the tax sparing provisions

incorporated in tax treaties have become redundant but the concomitant concessions already granted by the developing countries continue to remain. Hence, South Centre is of the view that an accompanying Protocol to the tax treaty should be negotiated and incorporated, clearly specifying that, as in this example, if the tax sparing provisions become redundant going forward, for whatever reason, the concomitant concessions granted by the developing countries shall also stand withdrawn or modified, as the case may be.