KPMG report: Overview of topics and workstreams discussed at recent meeting of UN Tax Committee

The United Nations (UN) is continuing its attempt to have a more prominent role in the global landscape. The UN Committee of Experts on International Cooperation in Tax Matters ("UN Tax Committee") is spearheading work on the UN Model Tax Convention and updated UN Transfer Pricing Guidelines, which provide an alternative to similar guidance issued by the OECD. The UN Tax Committee's Model Tax Convention generally seeks to allocate greater taxing rights to source countries, such as through permitting higher rates of withholding tax or creating new withholding taxes.

The 30th Session of the UN Tax Committee, held in New York March 24 – 27, 2025, focused on various topics, including the digitalized economy, extractive industries, transfer pricing, and the taxation of cryptoassets.

Below is a summary of the main items discussed and their potential implications for taxpayers.

Digitalized economy: Article 12AA

A key topic on the UN Tax Committee's docket was finalizing Article 12AA, previously known as Article XX. Article 12AA expands source countries' rights to tax service fees paid to nonresidents. It significantly broadens the types of services fees that source countries can tax under the UN Model Tax Convention, which were previously limited to technical services (under Article 12A) and independent person services (under Article 14). Article 12AA is purported to help developing countries, and one of the reasons given is to avoid disputes.

To demonstrate the application of Article 12AA, consider a multinational enterprise (MNE) headquartered in Country A that provides management services to its subsidiary in Country B. Assuming both countries have a bilateral tax treaty that incorporates Article 12AA, Country B can impose a tax on the service fees up to the percentage agreed upon through bilateral negotiations with Country A.

Article 12AA will be incorporated into the UN Model Tax Convention from 2025. However, the UN Tax Committee deferred discussions on certain paragraphs, including the taxation of remote workers, to its next session.

KPMG observation

There has been significant concern within the business community about the potential impact of

Article 12AA, particularly the risk of double taxation. For this reason, the decision to include Article 12AA in the UN Model Tax Convention will not be widely welcomed. Businesses will need to monitor whether this provision is included in new or amended tax treaties going forward or if countries decide to incorporate parallel provisions into their domestic law. It is worth noting that the UN Tax Committee included Article 12B (Income from automated digital services) in the UN Model Tax Treaty in 2021, and we are not aware of it being included in any tax treaties.

Furthermore, the agreement on Article 12AA was reached by incorporating a series of minority positions rather than achieving a compromise, resulting in a biased version of Article 12AA. Additionally, the absence of a specified tax rate leaves room for potentially high and varied rates across countries, adding to business uncertainty.

Taxation of extractive industries: Addressing Pillar Two and transfer pricing

The UN Tax Committee discussed various papers related to the taxation of extractive industries. These discussions focused on the valuation of mining products, tax incentives, the global minimum tax (Pillar Two), and energy transition.

- **Valuation of mining products:**
  - The primary method for valuing minerals is the comparable uncontrolled price (CUP) method, which requires identifying relevant index prices and making necessary adjustments for factors such as product quality, transport costs, and contractual terms.
  - The transactional net margin method (TNMM) may serve as an alternative or supplement to the CUP method, especially when hub entities are involved.
  - High incidence of valuation disputes highlights the need for effective technical assistance and capacity-building for tax administrators in developing countries.
  - Suggested administrative strategies include administrative pricing, the establishment of safe harbors, and advance pricing agreements (APAs).

- **Tax incentives and global minimum tax (Pillar Two):**
  - The 15% global minimum tax introduces complexities for resource-rich countries that use tax incentives to attract investment.
  - Certain tax incentives, such as reduced corporate income tax rates and tax holidays, may result in the effective tax rate in a developing country falling below 15%. If the developing country does not adopt a qualified domestic minimum top-up tax (QDMTT), a top-up tax may be imposed by an entity in a different jurisdiction, rendering the tax incentive ineffective.
  - Recommendations include reviewing existing tax incentives to ensure they achieve their intended purpose under the global minimum tax framework and considering the adoption of a QDMTT or a simplified domestic minimum tax (DMT).

All four papers presented on extractive materials were approved without substantial disagreement. These developments signal potential changes to tax incentive programs, particularly in the extractive industry, in response to Pillar Two.

Taxation of cryptoassets: Toolkit development

The ad hoc group on cryptoassets presented a revised toolkit to help countries identify and manage crypto tax risks. This framework addresses issues such as crypto reporting, tax crimes, and functional substitute risks.

KPMG observation

The UN and the OECD are intensifying their focus on the taxation of cryptoassets. The OECD's report, "Bringing Tax Transparency to Crypto Assets – An Update," outlines the development of the Cryptoasset Reporting Framework ("CARF"), aiming to extend the automatic exchange of information to the cryptoasset sector. Both the UN and the OECD's efforts underscore the need for taxpayers with cryptoassets to review their transfer pricing policies and maintain robust documentation, as scrutiny on these assets continues to increase.

Transfer pricing

Six papers on transfer pricing have been approved by the UN Tax Committee over the course of their membership:

- Transfer pricing during the COVID-19 economic downturn
- Transfer pricing compliance assurance
- Transfer pricing of carbon offsets and credits
- Industry/sector guidance for agricultural products
- Industry/sector guidance for the pharmaceutical industry
- Dispute avoidance and resolution

KPMG observation

For businesses operating in the agricultural products or pharmaceutical industries, it is important to be aware of the guidance released by the UN.

The UN Tax Committee identified four key areas for future workstreams:

- **Intragroup financial transactions:** Guidance on distinguishing between equity and loans, country risk adjustments, and cash pooling
- **Intangibles:** Practical guidance on bundling different types of intangibles and performing a DEMPE (development, enhancement, maintenance, protection, and exploitation) analysis
- **Intragroup services:** Providing additional examples and descriptions of service categories, and practical guidance on performing a benefit test
- **Industry guidance:** Additional industry-specific guidance, with telecom and infrastructure development identified as potential areas

During the session, members advocated for the following additional topics to be included in future work:

- **Working capital adjustments:** Guidance on the principles and formulas for working capital adjustments when profit methods are applied
- **Tourism industry:** Specific guidance on transfer pricing in the tourism industry
- **Simplification:** Exploring areas for simplification in transfer pricing to reduce complexity and increase legal certainty
- **Impact of artificial intelligence (AI):** Considering the impact of AI on traditional understanding of key value drivers in various industries

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