



Subcommittee on Taxation of the Digitalized and Globalized Economy – Report

Paper [CRP.22](#)
29th Session
UN Tax Committee
15-18 October 2024

PROGRESS

- Paper is [CRP.22](#).
- 4 Virtual Meetings since the 28th Session.
- 1 in-person meeting hosted by the IBFD in Amsterdam, held jointly with the UN Model Subcommittee
- Particular thanks to consultants for greatly assisting the Subcommittee's work.

Workstream B – Function and Relevance of Physical Presence Tests

- **Workstream B** is the main focus of the paper – will address first.
- Mandate is to: Consider the function and relevance or otherwise of physical presence tests in the context of an increasingly digitalized and globalized economy.
- Provides for a new Article combining Articles 12A and 14 into a new provision (provisionally referred to as Article xx) dealing with cross-border business services.
- Article was considered at 27th and 28th Sessions (at that stage the proposal included Article 5(3)(b) also).
- Commentary was first considered at the 28th Session.

Workstream B – Function and Relevance of Physical Presence Tests

- **Designed to allow a Contracting State to tax fees for services paid to a resident of the other Contracting State on a gross basis up to a rate to be negotiated by the Contracting State.**
- **Intended to remove some of the limitations on a country's right to tax income from cross-border services under the provisions of the Model Tax Convention as it currently stands.**
- **Those limitations are seen as unjustified by the Committee as a whole.**
- **Commentary will recognize and outline contrary views of some Committee Members, as is usual in the Model.**

Workstream B – Function and Relevance of Physical Presence Tests

- **Allows taxation of payments in a country for cross-border services irrespective of where the services are performed and without any minimum threshold requirement such as a permanent establishment or fixed base in the country or the physical presence of the service provider in the country for a minimum number of days.**
- **Intended to make the taxation of fees for cross-border services by source countries more consistent.**

Workstream B – Function and Relevance of Physical Presence Tests

Treatment of services

- The Subcommittee *submits*:
 - the *revised draft text* of the proposed Article xx as provided in Annex A of [CRP.22](#) - *for approval*.
 - the *revised draft Commentary* to the new article as provided at Annex A of [CRP.22](#) - *for further consideration and general approval if the Committee so decides. ...*

Workstream B – Function and Relevance of Physical Presence Tests

- **A general approval of the draft Commentary should leave open for Committee members to carry on the work of seeking to perfect the draft Commentary in order to fully reflect all members' views without changing the fundamental principles contained in Annex B.**
- **At the 30th Session the text will be completed if any such new text is presented by the Subcommittee and the Committee so agrees.**

Workstream C –
Cross-border
taxation issues
relating to remote
workers **and**
Workstream B

Workstream C (and B)

- Annex C of [CRP.22](#) relates to Both Workstreams B and C on Cross-border taxation issues relating to remote workers.
- Proposes additional Commentary to Article 15 (Dependent Personal Services) addressing a possible alternative provision:
 - a new paragraph 4, dealing with the taxation of income from employment derived by an employee resident in one contracting state and paid by an employer resident in the other contracting state.
 - allows the country in which the employer is resident to impose tax on the non-resident employee's income from employment exercised outside the employer's country, subject to the elimination of double taxation.

Workstreams C and B

Workstream C (and B)

- A proposal for such a paragraph in Article 15 was previously discussed at the 27th Session, where it was decided to include this as an option in the Commentary.
- Allows the country in which the employer is resident to impose tax on the non-resident employee's income from employment exercised outside the employer's country, subject to the elimination of double taxation.
- The draft commentary at Annex C, with the optional paragraph 4 of Article 15, is proposed for approval at this Session.

Workstream A –
A more
Multilateralized
Implementation
of specific UN
Model provisions

- **Workstream A** - options for a more multilateralized form of implementing specific UN Model Tax Convention provisions.
- Latest draft FTI text – including potential schedules was finalized at 28th Session (at pp. 9-42 of [CRP.8](#) for that session) .
- FTI was supported by the Committee as a whole, but not all Members supported the instrument.
- Will be translated into 5 other official UN languages as an official document.
- It is proposed that the Committee will, at this Session, ask ECOSOC to note the FTI and invite further action by interested Member States.
- Up to such Member States what sort of action is proposed.

Thank You!