



The Co-Leads,

Workstream II

Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation,
United Nations Headquarters,
New York,
USA

WRITTEN COMMENTS FROM THE AFRICAN TAX ADMINISTRATION FORUM (ATAF) ON THE DRAFT ISSUES NOTE FOR WORKSTREAM II – TAXATION OF INCOME DERIVED FROM THE PROVISION OF CROSS-BORDER SERVICES IN AN INCREASINGLY DIGITALIZED AND GLOBALIZED ECONOMY

1. The African Tax Administration Forum (ATAF) welcomes the opportunity to provide input on the Draft Issues Note for Workstream II. While we commend the comprehensive overview of the current rules and challenges in taxing cross-border services, we emphasise the need to find a solution that reflects the interests and realities of the developing economies, including those in Africa. Our submission highlights gaps in the current framework, proposes key considerations for new rules, and offers practical guidance on defining the protocol's scope, specifically through the lens of Africa's unique tax challenges and development priorities, and generally considering the need for fairness and inclusiveness for all parties in setting the new rules.

General Comments

2. ATAF appreciates the detailed analysis in Section III(a) but notes that the perspectives of African tax administrations, particularly those grappling with limitations posed by the existing international tax rules, would be to find a simple-to-administer solution that works for all parties. The current rules disproportionately favour residence jurisdictions, leaving source jurisdictions

with minimal taxing rights. Additionally, the rules do not facilitate effective taxation of services, particularly in the source states. This imbalance must be addressed to ensure outcomes that are equitable and meet the commitments, by members, for the pursuit of fair taxing rights for all parties.

3. We note the justification for net taxation of services where the services are performed and the aversion of some jurisdictions to taxation of services rendered remotely. However, it is also instructive to emphasise their admission to exploring or having adopted broader nexus rules to take account of new ways of doing business.¹ Accordingly, we advocate for an agreed basket of tools for taxing services, which must include new Nexus rules, improvement of some rules that already work and a more robust approach to dealing with services generally, including issues relating to new ways of doing business. In this regard, we identify with the conclusion drawn in paragraph 13 of the Issue Note that the rules that limit source State taxation to cases in which services are provided in that State do not fully reflect current ways of doing business.
4. Flexibility for Developing Economies: The protocol must accommodate the diverse administrative capacities of African states. Many of our members rely on gross-basis withholding taxes due to their simplicity and enforceability. The observation on existing old treaties, on the continent, that are difficult to modify or terminate, further prevents the imposition of simple-to-administer taxes. New rules should not undermine these mechanisms but rather enhance them with safeguards against abuse. ATAF also identifies with concerns raised by developing countries in paragraph 12 of the Issue Notes about the difficulties of applying transfer pricing rules to the intra-company supply of services. We call for the workstream to be bold and innovative in the drive to find new solutions and in enhancing the existing framework where necessary.

Specific Comments

5. Section III(a): Current Rules and Reasons for Change.

Response: While Section III(a) provides a useful overview, A few critical African realities need to be highlighted: -

¹ See paragraph 8 of the Issue Note

- a. *Treaty Limitations*: Many African countries are bound by outdated treaties based on older UN/OECD Models, which restrict their ability to tax cross-border services, even though the services are consumed locally. Our members are mostly of the type described in paragraph 7 of the Issue Notes affected by tax treaties in a manner described in paragraphs 9 and 11 of the Notes. As such, any viable solution must include some sort of treaty-based fix that would apply to the existing treaty network and be acceptable to parties in future negotiations or readily acceptable by the provision of the protocols to all parties to the protocol.
- b. *Digital Services Gap*: The rise of digital services, including digital content, online advertising, online platforms for intermediation services, online cloud computing services, etc, has come with several policy, legislative and administrative gaps. These gaps have exacerbated revenue losses. Some of our members that attempted to tax these categories of service under domestic law have faced challenges due to treaty constraints and a lack of clear nexus rules, as well as administrative challenges of enforcing such measures
- c. *Capacity Constraints*: The note underestimates the administrative burden of net-basis taxation. For instance, several tax authorities in Africa struggle to audit offshore service providers due to limited access to financial records and suitable comparables. It is also very unhelpful that many offshore jurisdictions show little or no commitment to allowing access to such information, even in cases where there exists an arrangement or framework for exchange of information for tax purposes between the two countries.
- d. *User Participation and User Data*: *African markets contribute significantly to value creation (e.g., viewing of online advertisements, user data generation for global tech firms, etc.). This should justify source taxation, even without physical presence, hence the creation of new nexus rules that recognise value creation by market jurisdictions.*

6. Key Considerations for New Rules

ATAF proposes the following considerations for the new rules under the protocol:

- a. From the analysis supplied by the Notes and the realities of our member states, source jurisdictions are currently at the receiving end of the existing rules and have been for a long time. Accordingly, any new rules should aim to balance taxing rights over services in a manner that takes cognisance, and is reflective, of the interest of source countries,

especially for services consumed locally. This aligns with recent trends from the United Nations Model Tax Convention (UN MTC) updates, including those of 2025.

- b.* **Simplicity and Enforceability:** Preference on imposition of Withholding Taxes (WHT) has been the practice of many African countries. As such, we proposed that WHT, as a collection mechanism, be considered for any option chosen for the design of the new rules, especially for traditional services where this method is effective. More innovative approaches and further work may be required for digital services and business-to-consumer services, where WHT as a collection mechanism may prove impractical or inefficient. In any case, net-basis taxation may be made an option for taxpayers with sufficient documentation, where services are physically provided in the country, usually in connection with a permanent establishment and other similar scenarios, except with respect to artists and sportspersons whose taxation regime is currently governed by Article 17 of the UN MTC.
- c.* **A clear nexus test** (e.g., "significant economic presence") should be established to cover digital services, with thresholds tailored to accommodate small developing economies in Africa and elsewhere. The new nexus should not be limited by the lack of physical presence in a jurisdiction, especially in respect of digital services.
- d.* **Anti-Abuse Measures:** Rules must be designed to prevent profit shifting through intra-group service fees.
- e.* **Existing Rules:** the workstream must take a closer look at new development concerning taxation of services including but not limited to certain design elements of Pillar 1-Amount A, the UN MTC Amendments: Articles 12AA (all services except certain specialized services) Article 8 (Alternative A – international transport), 12C (insurance) and 12B (income from automated digital services). We believe that scrutiny of these rules will yield additional lessons to the workstream, allowing it to produce a new rule or set of rules that is reflective of the motives and aspirations behind the changes reflected in those rules.
- f.* **New value streams:** The new rules should take into account new value streams created by businesses providing digital services, such as the value of user data and user participation, and ensure that the jurisdictions in which such value is created are allocated taxing rights. As indicated above, the design of this consideration can draw from some of the existing frameworks, such as the Amount A of Pillar 1.

7. Defining the Protocol's Scope

- a. Taxes Covered: The protocol should explicitly include all income taxes and exclude indirect taxes (e.g., VAT, GST and their functional equivalent) to avoid confusion and ambiguity. The rules should be designed to forestall a scenario where the burden of the resultant tax is shifted to the local consumers of the product.
 - b. Services Covered: We note the concerns of the workstream by pointing out the need to distinguish between the current protocol and future protocol on taxation of the digital economy. However, we advise the workstream to focus on what is currently before it and allow time and the framework, when constituted, to consider the need, scope and propriety of having another protocol on the digital economy. In this sense, we believe that a protocol on taxation of cross-border services in a “digitised” and “globalised” economy must be broadly scoped to address the challenges in taxing all services in a “digitised” and “globalised” economy. In this regard, the in-scope services should encompass traditional and digital services, including, but not limited to:

 - i. Digital services (e.g., SaaS, PaaS, advertising).
 - ii. Business-to-business services (e.g., legal, accounting, intra-group payments).
 - iii. Business-to-consumer services
8. In conclusion, ATAF urges Workstream II to prioritise practicality and fairness for all parties, including the African economies. The protocol must:

 - i. Empower source jurisdictions to tax services effectively.
 - ii. Provide flexible, enforceable mechanisms (e.g., withholding taxes).
 - iii. Include robust scoping to seal current and prevent any foreseeable loopholes.
9. ATAF remains ready to collaborate on refining these proposals and ensuring the protocol delivers tangible benefits for all member states. We appreciate the opportunity to contribute to the process.