Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation – Workstream II – Co-Leads' Draft Issues Note – Comments from France (July 2025)

First of all, France wishes to express its appreciation to the Chair, the co-leads, and the Secretariat for their continued efforts in facilitating discussions on this complex and important matter. Recognizing the value of multilateral dialogue, it is and will continue to be constructively engaged in this process.

1. General comments regarding the current rules for taxation of income from cross-border services and the rationale for change

France notes the significant divergence in how domestic legal frameworks address the taxation of such services. France reaffirms its view that a net basis taxation conditional to physical presence is more economically sound, fair, and administratively effective. This principle is embedded in France's treaty practice, consistent with Article 7 of the OECD Model Convention.

At the same time, France acknowledges the concerns expressed by some States regarding the limitations of current nexus rules in adequately capturing value generated by modern, especially digital business models.

France's strong conviction is that the tax challenges resulting from the digitalization of the economy should be addressed in a multilateral, consensus-based and balanced manner.

Conversely, France expresses strong reservations with regard to any unilateral approach that would allocate taxing rights based on a new nexus and provide for gross-basis taxation. Such a rule would present significant legal and practical challenges, including inconsistency with existing treaty obligations, heightened risk of double taxation and deviation from longstanding international principles.

More specifically on the reflection of a new nexus, France is very cautious regarding the generalization of concepts such as "significant economic presence", which lack legal precision and may generate enforceability issues and risks of disputes.

Besides, France is strongly convinced that taxation of income from cross-border services on a gross basis is in most cases inappropriate given that it does not factor in the costs incurred by the company and therefore the profitability of the activity. This approach impacts disproportionately businesses, including small and medium-sized enterprises, sometimes challenging the sustainability of their activity abroad.

Recalling the heterogeneous nature of cross-border services, France underscores that significant distinctions exist between, for example, fully automated digital services and bespoke professional services. Any comprehensive international framework must reflect these complexities and avoid a "one-size-fits-all" approach.

2. Proposals of a way forward on this protocol

Firstly, France considers that the solution to the tax challenges resulting from the digitalization of the economy lies in the implementation of pillar 1 of the two-pillar reform under discussion at the G20/OECD Inclusive Framework. As a massive 200B$ would be redistributed it is important, considering our limited resources, to avoid any duplication of this work.

Besides, priority should be given to strengthening domestic resource mobilization through capacity-building efforts and the provision of technical assistance, generally speaking and more specifically in the area of cross-border services. In particular, additional support enabling developing countries to effectively apply transfer pricing rules and better secure taxation on resident profits could be envisaged.

France also strongly recommends, in the interest of national sovereignty, that the protocol developed by the committee follows an elective approach. Being one of the jurisdictions with the most extensive networks of bilateral tax agreements globally, France would like to recall that tax treaties are the result of specific bilateral relationships and the outcome of mutual concessions. In that regard, a one-fits-all approach which would disrupt the general balance of a large proportion of tax treaties would be inappropriate. For sovereignty reasons, jurisdictions should remain free to engage if they so wish in bilateral discussions with treaty partners, and to modify tax treaties if they consider the general balance mutually beneficial.