

Federal Republic of Germany

Submission to the United Nations Intergovernmental Negotiating
Committee

on the Framework Convention on International Tax Cooperation
(UNFCITC)

Workstream II

Co-Leads' Draft Issues Note

I. Abstract

Germany appreciates the opportunity to contribute to the Co-Leads' Draft Issues Note on Workstream II regarding the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.

Germany maintains that income from the provision of services should generally be taxed in the business's state of residence unless a permanent establishment is present in the source state. This long-established principle reflects a balanced and administrable approach. However, at the same time, Germany also takes note of the challenges posed by the existing system and will play a constructive role in the improvement of existing rules. That is why Germany supports the ongoing work on Pillar One (Amount A), which proposes a targeted reallocation of taxing rights to address the challenges of digitalization.

In Germany's view, any new international rules developed under this protocol should align with existing bilateral treaty frameworks, avoid duplication of efforts, and build on the work undertaken by the Inclusive Framework on BEPS. Particular attention must be paid to administrative feasibility, net taxation, and legal certainty for both tax administrations and taxpayers.

Germany strongly encourages continued focus on inclusive negotiations, coherence with established standards, and pragmatic solutions that recognize the differing capacities and priorities of Member States. We welcome future discussions to refine the scope and ensure that any new rules are future-proof, equitable, and technically robust.

II. Input on Issues Raised in Section IV of the Draft Issues Note

(a) Whether Section III(a) comprehensively describes current rules and reasons for change

Germany acknowledges that Section III(a) provides a sound overview of current international tax rules concerning services. However, we emphasize that more focus should be given to the concept and definition of "permanent establishment".

Germany encourages the Committee to undertake a thorough evaluation of existing provisions, with attention to:

- Demarcation challenges between goods and services;
- Difficulties in tax collection and base determination; and
- The administrative burden for tax authorities and taxpayers.

Such analysis should precede any normative proposals to ensure informed and coherent solutions.

(b) Considerations most important in developing possible new rules for service taxation

Germany underscores the need for the further work to:

- Integrate as seamlessly as possible into the existing bilateral tax treaty networks;
- Avoid disruption of well-established principles of net taxation;
- Be straightforward and administrable for both tax authorities and businesses; and
- Ensure that tax claims are enforceable and grounded in legal certainty.

(c) Defining the scope of the protocol (taxes and services to be covered)

Germany believes the scope of the protocol should align closely with internationally developed outcomes under Pillar One and Pillar Two to ensure complementarity and avoid duplication.

III. General Remarks

Germany reiterates the importance of adhering to the Terms of Reference, particularly the principles of inclusivity, complementarity, fairness, and coherence. The intergovernmental negotiating process should continue to recognize and integrate the valuable contributions, tools, and expertise of other institutions involved in international tax cooperation at the multilateral, regional, and national levels.

Germany continues to view the existing international approach - taxing services under business profits where a permanent establishment exists - as balanced, administrable, and fair. It provides clarity, ensures taxation based on the ability-to-pay principle - unlike gross taxation - and avoids complex demarcation issues between goods and services.

The long-standing practice under both the OECD and UN models ensures consistency and predictability. However, at the same time, Germany also takes note of the challenges posed by the existing system and will play a constructive role in the improvement of existing rules. In order to achieve this, rather than reinventing core principles, international efforts should focus on identified gaps and the solutions, already developed in Amount A under the Inclusive Framework on BEPS.

IV. Potential Scope of the Protocol

If new concepts are to be developed under the protocol, Germany emphasizes that:

- The scope must be carefully aligned with existing tax treaty practice.

- Any new nexus rules or source-based allocations should be precisely defined, avoid ambiguity, and reflect economic reality.
- Taxing rights should continue to be based on clear thresholds and objective criteria, such as permanent establishment, while remaining responsive to evolving digital business models.

The aim should be to ensure fair allocation of taxing rights while maintaining simplicity, neutrality, and administrative feasibility.

V. Conclusion

Germany remains fully committed to supporting a transparent, inclusive, and technically sound negotiation process under the UNFCITC. We welcome the ongoing work of the Co-Leads and stand ready to contribute further to the development of a robust, coherent, and sustainable framework for taxing income from cross-border services in the digital age.