



ICC comments in response to UN Intergovernmental Negotiating Committee Workstream II Co-Leads' Draft Issues Note

Early Protocol on the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy

Abstract: *The International Chamber of Commerce (ICC) would like to provide input on the UN Intergovernmental Negotiating Committee's Workstream II Draft Issues Note for the UN Tax Framework Convention, emphasizing the need for a consistent, stable, and certain global tax system to foster trade and investment.*

Tax policy should promote sustainable growth, job creation, and cross-border investment. This goal can be reached if legal certainty, stability, and simplicity are ensured. We express concern over growing complexity in international tax rules, especially proposals for sectoral taxes and the expansion of the scope of gross-basis withholding taxes on services. Such withholding taxes ignore the value or cost of services, reduce investment returns, and increase risks of double taxation, affecting companies of all sizes and regions. While services may not create a physical presence, taxing rights should be based on an economic nexus, ensuring consistence and coherence in the application of tax rules.

Business representatives, including those from developing countries, caution that gross-basis withholding taxes increase business costs, compel price increases on consumers, and discourage reinvestment and job creation. Gross-basis taxes inevitably raise prices, impacting demand and growth, which should be considered carefully by policymakers.

Contrary to suggestions in the Draft Issues Note, bilateral tax treaties are vital tools designed to prevent double taxation and facilitate trade and investment. No inference should be made that they represent barriers to trade.

Lastly, involving taxpayers directly in discussions and establishing a Business Advisory Council would help incorporate real-world business models and ensure tax policies reflect practical, balanced, and globally relevant outcomes.

The International Chamber of Commerce (ICC), as the world business organization speaking with authority on behalf of enterprises from all sectors in every part of the world, welcomes the opportunity to provide input on the [Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation Workstream I Co-Leads' Draft Issues Note](#). ICC has Permanent Observer Status at the United Nations, as decided by a UN General Assembly Resolution. ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment.

ICC appreciates work undertaken by the members of the Bureau of the Intergovernmental Negotiating Committee (INC) and the participants in Workstream II. In this response to the public consultation, we would like to provide some comments on the recently released Draft Issues Note on the topic of the Early Protocol on “taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.”

General Comment

As previous international tax framework negotiations have demonstrated, there is a need to first establish the fundamental principles on which taxing rights are to be allocated, before attempting to construct detailed allocation infrastructure. Without a reliable basis grounded in universally agreed principles of taxation, and taking in all forms of activity, including digitalization and other business models, trying to find consensus on allocation of taxing rights between the developed and the developing worlds is always going to risk becoming an ongoing exercise in frustration. We recommend that the focus of the UN should be on seeking consensus by performing the fundamental groundwork of establishing and agreeing the basis for standard universal principles to determine taxing rights over MNEs and other taxpayers, before attempting to develop the specific mechanisms for allocation in cases such as cross-border services. It is essential that the substantive protocols are in accordance with the principles of the Framework Convention, so the protocols should not be completed before the principles are agreed.

Specific Comments

1. Tax Policy to foster sustainable economic growth

Tax policy should fundamentally support cross-border trade and investment that maximises the benefits to citizens through the things that improve their lives, such as sustainable growth, job creation, and elimination of poverty through economic growth. From an administrative perspective, simplicity of rules remains a critical objective. Well-established tax instruments—such as corporate income tax and value-added tax—tend to meet these criteria more effectively than emerging alternatives. Tax policy does not operate in a vacuum and should not be a barrier to sustainable growth and investment that can sustain and increase domestic resource mobilization.

2. Concerns on Sectoral Taxes and Withholding Taxes on Services

We note with concern the growing complexity in the international tax landscape, including proposals for new sector-specific taxes and expanding the scope of gross-basis withholding taxes on services (e.g., paragraph 7 of the Draft Issues Note). Gross-basis withholding taxes are particularly distortive, as they do not account for the cost or value of the services provided. They reduce or delay returns on investment—especially when gross-up clauses are triggered—thus undermining business viability and increasing the risk of double taxation through tax outposts. This applies to companies from all industries, sizes and regions.

Additionally, while sale of services may not always relate to or create a physical presence (e.g., 183-day thresholds in paragraph 8), the creation of any new taxing right should be based on a proper economic **nexus** or substantive engagement beyond the passive receipt of services (e.g., paragraph 14). These principles are important to ensure and sustain equity and coherence in cross-border tax rules and facilitate ease in interpretation of international tax law.

When considering the use of a withholding tax (WHT) as a mechanism to raise revenues and circumvent the perception of time-consuming transfer pricing (TP) challenges, it is crucial that

businesses are afforded certainty regarding the ability to credit such WHT against their corporate taxation burden. Furthermore, these payments should not be subjected to additional aggressive TP disputes in addition to the withholding tax burden, otherwise the underlying concerns around transfer pricing disputes remain, whilst costs for consumers increase. For instance, in scenarios involving cost-sharing arrangements where no mark-up is applied, the imposition of WHT could result in an additional tax burden without any underlying TP issue. Therefore, cost-sharing arrangements should be exempted from the withholding tax.

Countries must also acknowledge that a WHT mechanism inherently represents an upfront cost for businesses, irrespective of whether actual profits related to the revenue taxed have been realized by the business. Very concerning is also the frequent absence of complete neutralization of double taxation (e.g., in cases where countries deny tax credits if WHT is not in conformity with tax treaty, taxpayers are then only allowed to deduct foreign taxes). The taxpayer will ultimately bear the cost of divergent interpretations of treaties and the procedures necessary to enforce the law, a position which undermines the objective of the Committee to ensure simplicity and fairness.

Currently, we also see examples around the world where tax authorities have adopted distinct approaches on the application of WHT on services, even when a double tax treaty would not permit to do so, creating even more uncertainty. For the UN Tax Framework Convention and early protocols to be successful, it is of fundamental importance to ensure that there is no fragmentation in the system and that legal and tax certainty are considered at the core of this initiative.

Moreover, the rates of these withholding taxes necessitate careful bilateral negotiation in each instance. This is particularly vital when considering support services exchanged between developing countries. Given the broad range of margins that different industries and activities command (and will command in future as business practices and services continue to evolve), we note with particular concern the equity and distortive impacts of blunt instruments like gross basis withholding taxes – particularly when set at high and/or inflexible levels.

3. Economic Impacts of New Withholding Measures

Representatives of the business community, including those in developing countries, have raised serious concerns regarding new provisions for taxing cross-border services that will operate as withholding taxes on a gross basis. While such taxes may provide short-term revenue gains, they raise the cost of doing business and compel companies to adjust pricing and/or reduce cross-border trade, ultimately affecting consumers and deterring investment. Gross-basis taxation also disincentivizes small companies, particularly those operating on small or no profit margins, not atypical for start-ups, from reinvesting in their own company, and hampers prospects of sectoral expansion and job-creation. Moreover, incremental taxes—like any other cost—are passed on to consumers when possible, directly impacting demand, affordability, and growth potential. As the Committee continues exploring the scope of the protocol and the future direction of its work, we urge all stakeholders to assess new proposals through a sound economic lens.

4. Clarification on Tax Treaty Objectives

Contrary to what is suggested in paragraph 11 of the Draft Issues Note, bilateral tax treaties are not a barrier to taxation. Rather, they are essential tools designed to eliminate double taxation and thereby remove obstacles to cross-border trade and investment. While it is conceivable that treaties previously agreed did not and/or do not represent a final balance of taxing rights that treaty partners believe is equitable due either to imbalance in negotiating power and/or the development of international business practices changing where value is created, this does not mean that the treaties are a barrier to taxation. Mischaracterizing the role of bilateral tax treaties may risk

undermining one of the few legal frameworks that support predictability and legal certainty in international taxation.

5. Engagement with Taxpayers and Use of Practical Examples

We understand from the Draft Issues Note that concrete examples for the provision of services and their tax consequences have been discussed during the workstream's meetings. However, we would like to emphasize that involving taxpayers in those meetings that can accurately describe often complex business models — both as providers and recipients of services— can ensure that the full spectrum of real-world transactions is considered. Past discussions within the Committee have included proposals to establish a **Business Advisory Council** to bring in diverse views from across sectors and regions. This council will provide insights, information, and perspectives from taxpayers in a transparent and constructive manner. In terms of composition, we propose an advisory council made up of 20 business representatives from all regions of the world, reflecting the UN regional groupings (i.e., four business representatives per UN region, with each representing a different country). This structure will ensure balanced representation, including equal representation from the business communities in developing countries. We recommend that the Chair of the UN Intergovernmental Negotiating Committee hold consultations with the Technical Business Advisory Council and publish a report on these consultations in English on the Committee's website to ensure full transparency. We reiterate our strong support for this idea and believe such a mechanism is essential to ensure that outcomes are workable, balanced, and reflective of global and regional business realities.

Conclusion

We wish to reaffirm the critical importance of ensuring that any development of established tax policy does not become a barrier to trade and investment. Creating a tax environment that facilitates, rather than hinders, economic activity is essential for sustainable growth.

Furthermore, we emphasize the vital role of taxpayer engagement throughout the process. Taxpayers bring invaluable insights by sharing real-world business models, highlighting existing and emerging challenges, and helping to shape tax solutions that are practical, effective, and predictable. Their active participation is key to developing policies that are both balanced and responsive to the complexities of international commerce.

As ICC, we remain committed to constructively participating in the process.

About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

