

The Chairman

Intergovernmental Negotiating Committee to draft United Nations Framework Convention on International Tax Cooperation
And two early Protocols

The Co-Lead

Workstream II: Taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy

Nigeria's Comments in Response to Issues Note on Taxation of Income from cross-border Services (Workstream II)

Nigeria appreciates the contributions made by the co-lead, the Secretariat and UN member States in the development of workstream II Issues Note. Further, Nigeria aligns with the submissions of the Africa Group (AG) and hereby submits the following comments.

Abstract

Nigeria presents its position on the negotiation of protocol 1 under the United Nations Framework Convention on International Tax Cooperation, which seeks to address the challenges in taxing income from cross-border services.

Nigeria recognises the inadequacies of the current rules in today's digital and service driven economy. Nigeria calls for a broad and future-proof scope; rules that are simple, administrable, flexible, effective and efficient in line with international tax principles.

To support effective implementation, Nigeria proposes optional mechanisms to address treaty related limitations, enabling timely and coordinated updating of existing treaties.

1. General comments

For Protocol 1 to give effect to the principles set out in the Terms of Reference (ToR) paragraphs 9 (a), (b), (f), and (g), as well as the commitment in paragraph 10 (a) concerning the fair allocation of taxing rights and the equitable taxation of multinational enterprises, it must be grounded in established international tax principles, including inter-nation equity, simplicity, effectiveness, efficiency, neutrality, and flexibility.

Nigeria strongly supports some of the observations in the Issues Note ("Note"), as outlined below:

- (a) the Note correctly highlights the divergences in domestic tax laws concerning the taxation of cross-border (paragraph 6);

- (b) these divergences, together with treaty-based limitations on taxing cross-border services, have resulted in a systemic imbalance that unduly favours residence jurisdictions over source countries (para. 9);
- (c) Articles 8 (Alternative A), 12B, 12C, and 12AA of the 2025 UN Model Tax Convention are consistent with the domestic tax frameworks of many developing countries (paragraph 10);
- (d) the Note rightly acknowledges that many developing countries are constrained by outdated tax treaties that limit their ability to tax services and face significant legal and institutional hurdles in amending or terminating such treaties (paragraph 11);
- (e) Nigeria agrees with the challenges identified regarding the application of transfer pricing rules in developing countries, including the lack of comparables, restricted access to commercial databases, and the high cost of such access (paragraph 12);
- (f) any new rules should support domestic resource mobilisation, remove barriers to cross-border trade and investment, and promote efficiency, neutrality, simplicity, and ease of administration (paragraph. 14);
- (g) Nigeria supports the flexible application of differentiated rules for distinct categories of services (paragraph 17),
- (h) the definition of value creation should extend beyond the interaction of demand and supply to include user-based contributions such as user data and participation (paragraph 18);
- (i) Nigeria endorses the introduction of new nexus rules, some of which may be based on Significant Economic Presence (SEP) (paragraph 19); and
- (j) the focus of the Protocol should be on the substance and nature of the tax, irrespective of its label (paragraph 20).

However, Nigeria recognises that the existing special rules for the taxation of income of entertainers, directors and sportspersons mentioned in paragraph 9 may not be limited to developed countries. Many developing countries also adopt such rules of taxation.

2. Specific comments

Nigeria's position for the protocol on taxing cross-border services are as follows:

- (a) Nigeria supports a broad scope that covers all cross-border services, without requiring the establishment of a permanent establishment. This should include both new and emerging services and should not be limited to traditional services provided through digital means.
- (b) Nigeria supports the adoption of an additional nexus rule, amongst other nexus to be determined, modelled after the Significant Economic Presence (SEP) adopted by some jurisdictions. This nexus could be: Payment-based

sourcing as contained in former Article 12A UNMTC; or Categorised sourcing rules under Amount A.

- (c) Nigeria supports a gross-basis taxation. If a gross-basis taxation is adopted, the rate should be a realistic proxy for taxation on net income to ensure fairness. However, if a net-basis taxation is ultimately adopted, fair and equitable rules should be included on how profits will be allocated among all legitimate sources.
- (d) Nigeria supports approaches that offer a simpler and more equitable alternative taxation of MNEs against the complex and frequently abused transfer pricing rules.
- (e) While the focus of the Protocol should not be on the name or type, the substance and nature of the tax should ensure that taxpayers are unable to shift the burden of the tax onto service consumers.
- (f) Nigeria supports the inclusion of provisions aimed at preventing tax avoidance, while eliminating double taxation.

3. Conclusion

To achieve the objectives set out in the ToR, the Protocol should support effective domestic resource mobilization and fair allocation of taxing rights amongst jurisdictions. We look forward to continued collaboration in developing a Protocol that is not only principled but also inclusive and responsive to the needs of all countries, especially developing economies.