

Portuguese delegation written comments on the 27th June Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation (INC) Workstream I Co-Leads' Draft Issues Note

Abstract: This document contains the evaluation of some elements of the INC Workstream I Co-Leads Draft Issues Note, as well as some drafting suggestions, which the Portuguese delegation to the INC believe may enhance the final version of the Issues Note, in a view to better foster discussions and decisions during the first and second INC plenary sessions in August 2025. The PRT position on the issues singled out by the Draft Issues Note to be discussed by Member States during the first and second INC plenary sessions will be presented in due time, during that sessions.

In respect of § 3

Even if we agree with the observation that all the commitments do not have the same potential to be developed (*detailed*) under the Framework Convention terms – as a result of their different nature and content, as well as the INC’s capability to refine the terms of all the commitments during the available calendar –, we have serious concerns about what could be a ‘stand-alone action’ in this context. In addition, we are not able to identify which specific commitment, due to its alleged differences in purpose, does give rise to the possibility of having any sort of a so called ‘stand-alone action’ which does not correspond to any of the early Protocols or to a Protocol that will subsequently be elaborated under the Framework Convention.

As such, we would appreciate that no distinction is made among commitments that are intended to provide support for Protocols and others commitments.

In respect of § 8

We suggest the following amendment:

«(...). Moreover, **the final** resolution of a cross-border tax dispute through domestic courts may take years, and there is no guarantee that a court decision will be accepted by any other countries **implicated in that cross-border tax dispute whose tax revenues are at stake**, (...)»

In respect of § 12

It is not clear in relation to what are countries considered to be ‘third countries’ in the context of the theme of this paragraph. We recall that in the context of the allocation of taxing rights over the income generated from business activities, even the countries of supply and demand may be considered as third countries, since the relevance, in this respect, is usually recognized either to the source jurisdiction and the residence jurisdiction.

As such, we suggest the following amendment:

«(...). For them, this would include not only the countries of supply and demand but also where users are located while other participants are uncertain of the economic basis on which taxing rights should be allocated **to countries that are neither the source or the residence jurisdiction**~~third countries~~. (...)»

In respect of § 14

We believe that the discussion in respect of the allocation of taxing rights over business activities will be more fruitful if we assume a more rigorous approach to the use of either “profit” or “income” expressions. The income generated on businesses activities is usually subject to tax under the form of a profit generated through those activities and business income being only the starting point of the calculation of a taxpayer income tax base, since a business can obtain an income and not make a profit due to business costs incurred over the tax period. In order to bring more transparency to the issue and to align it to the usually perceived rationales to a fair and neutral income taxation, we suggest substituting “income generated” by “profit generated”.

In accordance, we suggest the following amendment:

«14. The commitment should urge parties to agree on an approach to the allocation of taxing rights that recognizes that every jurisdiction where business activity takes place should share in taxing rights over the ~~profit income~~ generated from such business activities, while recognizing the value of economic efficiency and tax neutrality, simplicity and administrability and the importance of effects on cross-border trade and investment. (...)»

In respect of § 18

We suggest the following amendment, aligning it with the relevant ToR text:

«18. The workstream will continue to work on the other subjects covered in paragraph 10 of the ToR: tax evasion and avoidance by high-net worth individuals, tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices and effective mutual administrative assistance ~~in tax matters~~, including with respect to transparency and exchange of information for tax purposes. (...)»