

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

Abstract: This document contains the evaluation of some elements of the INC Workstream II 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 § 5

We suggest the following amendments to the footnote 3:

«3 Most Member States ~~will~~ tax their residents on their worldwide income on a net basis, relieving double taxation either through the exemption method (in which certain income earned abroad is not included in the tax base in the residence State), the credit method (in which the tax that would have been imposed in the residence State ~~over the income earned abroad~~ is reduced by the amount of taxes paid to the ~~source~~ ~~other~~ State), or a mix of both. If the exemption method applies with respect to certain income, the residence State will simply not tax that income, ~~not exercising and so will have no residual~~ taxing rights. If the credit method applies, the residence State ~~will in principle apply its~~ ~~have residual~~ taxing rights but, whether it actually will collect any tax will depend on a complex interaction between taxation in the source State and limitations in the residence State (including the application of any relevant expense allocation rules).»

In respect of § 8

We suggest the following amendments:

«(...) Therefore, if a non-resident is physically present in the country while performing the services, the income generally ~~is~~ ~~will be~~ subject to tax ~~on that country~~. Such taxation is usually on a net basis, with deductions allowed for relevant expenses (even if such expenses were paid by another part of the entity – ~~(such as the head office)~~ – but incurred for purposes of the activities in the other Contracting State). (...)»

In respect of § 10

The first part of paragraph 10 seems to be clearly unnecessary *vis-à-vis* a brief description of the current rules in respect of the taxation of cross-border services income that are contained in the UN Model. In addition, that part of the paragraph does unbalances the document, since such an exhaustive attention to the preparatory works is not applied in relation to other instruments containing past, current or future rules in respect of the taxation of cross-border services income.

As such, we suggest this part of the paragraph to be deleted and the following amendment:

«10. ~~At the first meeting of the Ad Hoc Group of Experts that was charged with developing the UN Model Tax Convention in 1968, a delegate from a developing country argued that income from services should not be treated as business profits in order to allow countries to impose gross-basis withholding taxes. Ultimately, t~~The 1980 UN Model ~~did not adopt this approach; instead it~~ provided a separate threshold for services that does not require a fixed base but does require physical presence for at least 183 days in the relevant year. (...)»

In respect of § 13

We suggest the following amendment:

«13. There was a general acknowledgement within the workstream that the rules that limit source State taxation to cases in which services are provided in that State ~~not~~ fully reflect ~~some~~ current ways of doing business. (...)»

In respect of § 18

We do not recall any Workstream II Participant to have made a preposition such as the market jurisdiction contribution to value creation entitling it to receive a portion of the **tax revenue generated**.

In accordance, we would prefer not to have such a phrase in the document, and suggest it to be rewritten (in case what was initially pretended was a reference to the allocation of a portion of the **taxing rights over the profit generated**).

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. (...)»