

Submissions on Co-Leads Draft Issues Note on Workstream II

Radhakishan Rawal¹

1. DSTs as a Current Rule for taxation of services

Several countries have levied Digital Services Taxes (DSTs). DSTs may also be treated as a “Current Rules for the taxation of services” for the purpose of section III(a) of the Co-Leads Draft Issues Note on Workstream II.

2. Pros and cons of net basis, gross basis and presumptive basis of taxation

Net basis of taxation may be difficult in several cases of cross border service transactions. Especially when expenses for rendition of services are incurred in a country other than the source country. The MNEs find it difficult to substantiate all the expenses incurred and the tax authorities find it difficult to examine correctness of the deductions claimed. Further, these expenses should be allowable as per the domestic law of the source country. “Gross basis of taxation” avoids these difficulties.

“Presumptive basis of taxation” is another method which avoids these difficulties related to the net basis of taxation. Under this method, tax is levied at full rate (i.e. the rate at which net income would generally be taxed) but only on certain % of gross income. Thus, deduction is given for expenses on a presumptive basis.

Gross basis of taxation is somehow projected and perceived as an evil. However, it addresses several evils of net basis of taxation.

3. Taxing rights to the country of residence when services are performed in the country of residence

Article 12(5) of the India- Finland tax treaty prioritises taxing rights of the residence country over that of the country of source when the services are performed in the country of residence.

This paragraph is reproduced in Annexure A

4. Scope of services

The Protocol should define services to include all cross border services excluding those services which are dealt with by other Articles of the tax treaties.

5. OECD Pillar One

There does not seem to be anything happening on Pillar One even after spending so much time and resources.

Amount A of OECD Pillar One needs to be treated as dead and the Committee should not spend any time discussing Amount A.

¹ These are personal views and do not represent views of any organisation

Annexure A

ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the right or property for which the royalties are paid is used within a Contracting State or the fees for technical services relate to services performed, within a Contracting State, then such royalties or fees for technical services shall be deemed to arise in the State in which the right or property is used or the services are performed. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated