Third World Network

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For the kind attention of:

Mr. Ramy Youseff, Chair of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols (INC) and Ms. Liselott Kana, Co-Lead of Workstream II.

Cc: Permanent Representatives and Observers to the UN in New York

11 July 2025

Subject: Submission by the Third World Network regarding the Draft Issue Note of Workstream II (Taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy) of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation.

Third World Network most respectfully submits its Comments on the Draft Issue Note of Workstream II.

We would like to address respectfully the following related issues:

1. Source country taxation and digital services taxes;
2. Value creation; and
3. New nexus rules – permanent establishment and the "significant economic presence" test

In the exercise of their sovereign power, the governments of market jurisdictions have the jurisdiction to determine the source of income paid by its residents to non-resident entities.

In the exercise of the government of the market jurisdiction's sovereign right to tax, it may lawfully treat income received by a non-resident entity from clients domiciled within its territory as income sourced therein. Respect for this fundamental legal principle by all member states should serve as the starting point for any negotiation of a tax convention or its protocols.

Digital Services Tax should be treated as income tax. This will allow the taxpayer to claim foreign tax credit in its place of domicile and obviate any allegation of double taxation.

Digital platforms located in one tax jurisdiction often provide digital services to clients domiciled in another tax jurisdiction. Due to the nature of the business, the services are provided from one taxing jurisdiction to another solely through electronic or digital means, without the need for physical presence of the digital platform in the other taxing jurisdiction, i.e. the market jurisdiction. Since the digital platform has no permanent establishment in the market jurisdiction, under treaty rules, it is not liable to pay income tax there.

In order to address this blatantly unfair arrangement, some market jurisdictions have, rightfully and in the exercise of their sovereign right, imposed DST on the income earned from such transactions.

It is evident that such Digital Services Taxes (DSTs) are, in essence, income taxes. They are imposed on income derived from sources within the market jurisdiction by non-resident entities that would otherwise not be subject to income taxation therein due to the absence of a permanent establishment, as traditionally required under existing tax treaties.

However, there are allegations that the DST amounts to double taxation of these non-residents. One of the ways to avoid double taxation is to recognize that DST is a tax on income so that the taxpayer can claim foreign tax credit in its place of domicile.

If DSTs are illogically treated as something other than income tax, the taxing authority of the taxpayer's home country may disallow the claim for a foreign tax credit (FTC) on the ground that the FTC is available only for income taxes paid abroad.

Formulary apportionment should favour the allocation of more taxing rights to market jurisdictions.

To safeguard the interests of developing countries, any formulary apportionment of taxing rights in the digital economy should heavily favour the use of revenues generated from clients located in the market jurisdiction as the primary metric in the apportionment.

Prioritizing factors such as the number of employees, capital, assets, and intangible property—arguably none of which are located in the market jurisdiction but instead concentrated in the home countries of digital platforms, typically wealthy nations—would severely undermine the taxing rights of developing countries. This would not only result in drastically reduced revenues for market jurisdictions, but would also perpetuate an unjust transfer of wealth from the developing nations to the rich, industrialized countries, reinforcing existing inequalities in the international tax system.

Finally, we join other civil society organizations and labor unions in calling for our full participation as observers in all of the stages and aspects of the process, all of the Workstreams and the Committee – both in person and virtual, whether formal or informal.

We hope that you will find the above useful.

Respectfully yours,

Third World Network