

UNTC 31st Session

Stakeholder Input Template



Help inform the Committee's deliberations on their work programme for 2025-2029 by sharing your perspectives on challenges in tax policy and administration facing developing countries, emerging issues that need attention, and where there is a need for more or different guidance. Submissions should be made in one of the six (6) UN languages. All valid submissions will be published on the UN Tax Committee website in the language submitted.

Submission details: Deadline: **1 September 2025**, Email to: taxcommittee@un.org

Subject: Input for UN Tax Committee Work Programme (2025-2029)

INFORMATION

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Type: Civil Society

Organization (unless submission is in personal capacity): BEPS Monitoring Group

BACKGROUND (Maximum of 200 words) – Please respond on page 2.

Please provide a brief summary of your organization's mandate and areas of work unless this submission is in personal capacity, how they relate to international tax cooperation, domestic resource mobilization, sustainable development, or any other field. This will help us map and better contextualize your perspective and input.

WORK PROGRAMME PRIORITIES (Maximum of 2000 words inclusive of any footnotes) – Please respond on page 3.

What should be the Committee's priority issues for 2025-2029? Consider, in light of the Committee's mandate, both the provisional agenda topics and any additional areas you believe are important.

For each priority you recommend, please explain:

- a) Why is this issue important for developing countries?
- b) What specific guidance or tools should the Committee produce?
- c) How would this output be practical and valuable for countries?

SUPPORTING REFERENCES Please list any hyperlinks to relevant reports, studies, or other materials that support your recommendations. Do not attach files. – Please respond on page 4.

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The BMG is a network of experts on various aspects of international tax, set up by a number of civil society organizations which research and campaign for tax justice including: the Global Alliance for Tax Justice, Red de Justicia Fiscal de America Latina y el Caribe, Tax Justice Network, Christian Aid, Action Aid, Oxfam, ICRICT, and Tax Research UK. This submission has not been approved in advance by these organizations, which do not necessarily accept every detail or specific point made here-in, but they support the work of the BMG and endorse its general perspectives. It has been drafted by Sol Picciotto, Bob Michel, Jeff Kadet, Cristian Garate and Verónica Grondona.

WORK PROGRAMME PRIORITIES (*Maximum of 2000 words inclusive of any footnotes*)

What should be the Committee's priority issues for 2025-2029? Consider, in light of the Committee's mandate, both the provisional agenda topics and any additional areas you believe are important.

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Tax Nexus

A high priority for the Committee should be a reconsideration of the issue of the tax nexus, particularly in relation to the taxation of cross-border services. Such discussion should focus on article 5 and the Service PE on nexus factors beyond minimum days of presence. In conjunction with this, we suggest that the Committee could consider a methodology for attributing net profits if revenues are derived from a country with no physical presence, which could be based on article 7(4) of the model convention.

This issue has long been a matter of concern for developing countries. It has now come even more to the fore in the negotiations for the UN Framework Convention on International Tax Cooperation, especially the first protocol on 'taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy'.

Developing country members have long argued for a broad right to tax income at source, including taxation of services based on the location of the customer. It is widely accepted that services should be taxed based on the place of performance of the service. This has become increasingly difficult to determine with the rapid growth of cross-border services, due to improvements in information and communications technology resulting from digitalization, creating a divergence between the location of the services provider and the customer.

Traditionally, services were personal, requiring contact between the service provider and customer, so divergences were avoided. However, the requirement of a 'fixed base' was included in the first OECD model convention of 1963 in article 14 on 'independent personal services'. In contrast, article 14 in the first UN model treaty of 1980 allowed source taxation also if the payment derives from a resident of that state and exceeds a threshold amount, to be agreed by negotiation. This provision does not seem to have been used in an actual treaty, and regrettably was later omitted, so that the 'fixed base' requirement has generally been applied. It has resulted in frequent conflict and litigation in many countries.

The increased economic importance of services also led to a shift to their provision by business organizations such as corporations, bringing income from services under article 7, and hence subject to the article 5 requirement of a permanent establishment. The UN model included a provision for a 'services PE' in article 5.3.b, allowing source taxation for services provided by an enterprise through employees or other personnel, if the activities continue for six months. This

remains in the UN model (the period is now defined as 183 days) and is included in around 900 bilateral treaties.

However, the meaning of the provision requires further work in a context in which services are more and more often provided without any physical presence¹. At the UNTC meeting in 2013 it was pointed out that the wording requires only that the activities continue for the specified period, not the presence of personnel, either for the minimum period, or indeed at all. Nevertheless, it was agreed to maintain the 'traditional' interpretation that some physical presence of individuals was needed, although some pointed out that digitalization made this problematic, and the Committee agreed that the issue should be revisited. This has not yet taken place. No mention was made of the original 1980 version of article 14 which included a quantitative threshold.

Moreover, an additional dimension that has been a bit underexplored by the UN Committee of Experts and could be explored further under this new mandate, is the triangular situation in which the service fee payor nexus in country B clashes with the service PE activity nexus in country C. If both occur in country B, the PE nexus has priority. But if two 'source countries' are involved, two treaties are involved and there is no clear solution. A multilateral approach to the bilateral nexus rules could be explored for such cases.

This issue has become of crucial importance, as confirmed in the two reports (2015 and 2018) under Action 1 of the G20/OECD project on base erosion and profit shifting (BEPS). Yet it has not been addressed directly by either the OECD or the UN Tax Committee (UNTC). Consideration of this issue by the UNTC could also serve as the groundwork for the UN Framework Convention on International Tax Cooperation's protocol addressing taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.

Some countries have introduced a new nexus based on 'significant economic presence', and this was discussed in the OECD's Interim Report of 2018 on *Tax Challenges Arising from Digitalization*. The Two Pillar package agreed by the Inclusive Framework on BEPS in 2021 included a proposal for a new taxing right, Amount A under Pillar One. The draft multilateral convention developed to implement Amount A used a simple quantitative threshold. These two possibilities have been discussed in Workstream 2 of the INC on the Services Protocol, as referred to in the Issues Note from June 2025 (para. 19), which indicated that discussions will continue on this issue:

19. Several participants mentioned the adoption in their countries of a new nexus, the "significant economic presence" test. This test, which applies to both goods and services, allows taxation when a non-resident enterprise's activities in the jurisdiction produce more than a specified thresh-old of revenue, it conducts certain marketing activities there or there are other indicia of deliberate targeting of the jurisdiction's market. The monetary thresholds can be tailored to the size of the relevant economy. The workstream did not discuss the approach in great detail but is likely to come back to it after the August 2025 Sessions.

¹ In analyzing the situation of the Service PE provision contained in Article 5, 3), b) of the UN Model, within the scope of cross-border services in Research & Development & Innovation activities, the UN Committee of Experts could also consider clarifying special examples for developing countries."

Moreover, in addition to working on clear criteria for the identification of a tax nexus, the UNTC should also work on defining a criteria for the attribution of the net profits to the nexus. Such attribution rules would need to be based on an apportionment, since if there is no physical presence there is a disjuncture between the jurisdiction from which income derives and the location of the activities involving costs incurred to generate that profit. Although during the 30th session there was some suggestion to look at service PE profit attribution rules, such work was not advanced. The UN Convention still includes article 7(4) which allows for attribution to a PE based on apportionment, and this could be clarified and if necessary extended.

Therefore, work on this topic by the Committee of Experts would make an important contribution to this debate. It would also have great value independent of the outcome of the INC.

Finally, a discussion regarding criteria for the attribution of profits to the nexus will require an exchange of information similar to country by country reporting (CBCR), though expanding the information reporting standard of CBCR to not just record related and unrelated party sales by origin (i.e. by the MNE subsidiary that books the sales) but also by destination and preferably also by service type. Such exchange of information should not be limited to a risk analysis use (as is the case of CBCR under Action 13 of BEPS Action Plan) but should allow for tax determination.

SUPPORTING REFERENCES *Please list any hyperlinks to relevant reports, studies, or other materials that support your recommendations. Do not attach files.*

- Workstream II on the taxation of services ([Draft issues note 27 June 2025](#))