July 11, 2025

Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation
304 East 45th Street, FF-300
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Re: Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation Workstream II on the Taxation of Services

Abstract

The National Foreign Trade Council (the "NFTC") respectfully submits the following comments in response to the request from the Intergovernmental Negotiating Committee ("INC") for recommendations on the *UN Framework Convention on International Tax Cooperation,* the *Protocol on Cross-border Services* and the *Early Protocol on Tax Disputes Prevention and Resolution*, regarding the *Workstream II Co-Leads' Draft Issues Note on the Taxation of Services* ("Draft Issues Note"). NFTC strongly encourages the INC to consider the recommendations and work of the OECD Inclusive Framework consultations that addressed the question of scope for multilateral cooperation in taxation. NFTC cautions the adoption of gross-basis withholding taxes, citing the negative impact these taxes would have on developing economies. Similarly, the NFTC urges the INC to adopt a simplified approach, such as Amount B, that better accommodates the capacity constraints for many jurisdictions and provides a more reliable revenue stream, particularly for low-capacity jurisdictions. NFTC stands ready to work with members of the INC on a durable solution that allows tax authorities to focus on high-value transactions.

Introduction

The National Foreign Trade Council (the "NFTC") is writing in response to the request from the Intergovernmental Negotiating Committee ("INC") for recommendations on the *UN Framework Convention on International Tax Cooperation,* the *Protocol on Cross-border Services* and the *Early Protocol on Tax Disputes Prevention and Resolution*. Our submission addresses the proposals in *Workstream II Co-Leads' Draft Issues Note on the Taxation of Services* ("Draft Issues Note").

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, accounting for over $6 trillion in revenue and employing nearly 6 million people in the United States.

The NFTC appreciates the INC for inviting public comments and recommendations from stakeholders on the content of the Draft Issues Note issued on June 27, 2025. We respectfully submit the following recommendations.

Taxation of Cross-Border Services and Amount B

The INC is seeking input on the issue of "fair allocation of taxing rights" that recognizes "every jurisdiction where business activity takes place" as well as other issues of economic efficiency, tax neutrality, simplicity, administrability and the general importance of effects on cross-border trade and investment.[1] The INC is also seeking "explanation of how to determine where business activity takes place in light of digitalization and other new business models."[2]

NFTC has previously provided comments on this issue to the *28th Session of the UN Committee of Experts on International Cooperation in Tax Matters* in April 2024. The work undertaken by the INC is similar to the broad questions of "scoping" a tax system that took place in multiple rounds of consultation undertaken by the Organization for Economic Cooperation and Development ("OECD") together with the Inclusive Framework ("IF") through the Task Force on the Digital Economy ("TFDE"). The NFTC provided exhaustive input during those consultations and refers the INC to those comments available on our website (*see e.g.,* NFTC January 2023 Comments on OECD Amount B Consultation; NFTC August 2023 Comments on OECD Amount B Consultation).

The role of a model convention is to provide norms of taxation as well as the starting point for negotiations between contracting states. We appreciate the concerns of the INC about the evolution of the global economy and the historic reliance on physical presence tests. We recognize the issues surrounding the challenge of taxation with advances in technology and the ability to perform cross-border services without leaving one's resident jurisdiction.

In prior UN tax discussions, there has been supporting commentary on the notion that "…taxation based on physical presence on a net basis is more economically correct, efficient, and fairer. Moreover, the resident State is in the best position to determine the net profits."[3]

We strongly caution against gross-basis withholding taxes, including UN Model Treaty Article 12AA, with the recognition that any given country could act as either an importer or exporter of services. It is particularly crucial to consider the impact of such a rule on low value-added services, such as call centers, and whether developed or developing countries are more likely to provide low value-added services. Any modifications to these norms of taxation should prevent overwithholding and double taxation.

We understand the concern that at times, too much emphasis is given to activities that take place in the state of residence of the taxpayer or in third states, and not enough weight is given to the contribution of the market where the services are consumed. Given these concerns, we strongly urge the promotion of VATs, which are preferable in that they are more neutral, uniform, and economically efficient. NFTC strongly opposes Digital Services Taxes ("DSTs"), which are imposed on gross revenues without regard to whether there was a profit or loss. This can lead to double taxation, cause economic distortion, and create trade barriers. Furthermore, these taxes may ultimately fall on the consumer.

[1] Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation (2025). Workstream I Co-Leads' Draft Issues Note, 27 June.
[2] Ibid.
[3] Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation (2025). Workstream II Co-Leads' Draft Issues Note, 27 June.

The Draft Issues Note also mentions that developing nations often find that there is a lack of comparable transactions between unrelated parties, as well as other technical transfer pricing issues, which many nations lack the resources to manage. This is a long-standing question of the interests and revenue streams of developed countries versus developing countries and a frustration among global companies trying to close audits. Some states further urge that simpler and fairer rules be considered, which ignore the complexity of existing global tax rules. NFTC is in favor of simplicity in tax rules, but this must be balanced to ensure it reflects the economics of the transaction and does not result in double taxation.

One solution for a more streamlined approach is Amount B, which focuses on simplifying transfer pricing for routine marketing and distribution activities in market countries. Amount B aims to streamline the application of the arm's length principle, particularly for low-capacity jurisdictions. One place Amount B fell short was that it failed to include cross-border services in addition to physical goods. Moreover, the inclusion of the distribution of digital goods and services furthers the objective of simplifying and streamlining benchmarking for low-capacity jurisdictions which may not be able to do their own economic analyses, especially for digital goods. We urge the INC to consider an Amount B metric or similar UN provision to increase certainty on distribution activities and decrease compliance costs for taxpayers and tax authorities.

We encourage the INC to take the Amount B path on cross-border services, as it would significantly reduce the number of relatively low-value transactions from transnational tax disputes, providing efficiency for tax administrators and taxpayers, thus allowing national tax authorities to focus on higher-value transactions for both goods and services

Many of the topics raised in the Draft Issues Note could be handled efficiently and on a more expedited timeline by relying on this prior work. NFTC strongly urges the INC to consider taking this as a constructive first step that would provide a reliable stream of revenue to developing nations from the taxation of cross-border services. NFTC stands ready to work with Members of the INC on this effort.

Conclusion

As the INC develops the protocol on taxation of cross-border services in a digitalized economy, we urge consideration of prior efforts to simplify tax rules and prevent double taxation, such as Amount B. Such efforts would increase certainty for taxpayers and tax authorities, avoid undue complexity, and support the UN’s objective of creating a tax system that is inclusive, fair, and effective.

We appreciate the opportunity to provide input and the INC’s engagement with stakeholders on this issue. We encourage further engagement with the business community on this and other tax issues being discussed at the UN. We are happy to answer any questions or provide clarification on any of the issues raised. Please contact Anne Gordon, Vice President, International Tax Policy at agordon@nftc.org.