

# Review of the Inputs to the Issues Notes in preparation for the 1<sup>st</sup> and 2<sup>nd</sup> Sessions of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols

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## Objective

This document summarises the key points from the Issues Notes of the Work Streams (WSs) and incorporates publicly available input from the dedicated UN webpage. This document aims to support the ongoing discussion about UN FC developments, which the author has been actively following since 2023. In the spirit of collaboration, the author makes this document freely available.

## Methodology

### Overall Approach of this Review

This review adopts an add-on approach, meaning that inputs aligning with or reiterating issues already identified in the WS Issues Notes are not repeated. Instead, the focus is on reporting new proposals and critiques as accurately as possible.

### Methodology for Categorising Inputs in the Executive Summary

To ensure transparency and consistency in the drafting process, the following terminology is used to describe the prevalence of input across stakeholder submissions:

- **Significant Number of Inputs:** more than 50% of the inputs that specifically address a given subject, converge on a certain approach.

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<sup>1</sup> This document is a personal summary prepared by the author following a careful reading of all referenced materials. While every effort has been made to reflect the content accurately and respectfully, the wording is original and does not reproduce the source texts verbatim, except where explicitly quoted. All sources have been appropriately cited to maintain transparency and intellectual integrity. The structure of the summary draws inspiration from the WS Issues Notes format, and themes have been grouped into clusters based on the author's interpretation. This thematic clustering is intended solely to enhance clarity and readability; it does not imply consensus among the original authors, nor should it be taken as a definitive representation of their positions. Any misinterpretation or omission is entirely unintentional and remains the sole responsibility of the author. This background note should therefore not be understood as a substitute for the original documents, nor as a perfect embodiment of the nuanced views expressed therein. Given the inherent ambiguity of language, divergence in interpretation is possible, and the original authors may hold differing views. AI tools have only been used to assist with linguistic refinement and editing. No generative AI was used in the drafting of substantive content, selection of themes, or interpretation of the original documents. Any views expressed in this summary are solely those of the author and do not reflect the positions or work of any United Nations official or the organisation with which the author is affiliated. The author bears full responsibility for the content.

- **Another Group:** less than 50% of the inputs that address a specific subject.
- **Some (Isolated Viewpoints):** a single, distinct input that raises a unique or noteworthy perspective, regardless of whether it was echoed by others.

## Outline and Structure

### **Part 1 – Executive Summary** [reading time: 5 min]

Following the methodology mentioned above, this part outlines the main points derived from the review of all the inputs for all WSs. It identifies important topics likely to be discussed in the first and second sessions of the INC.

### **Part 2 – Main Findings** [reading time: 10 min]

This part expands on the executive summary and connects its main points. It highlights key insights from the summary and incorporates details from a detailed review of the input papers. The purpose is to summarise the information and emphasise the main issues. The author shares personal thoughts but keeps them minimal to maintain focus on the overall findings.

### **Part 3 – Workstreams Inputs: Data Overview** [reading time: 5 min]

This section systematically categorises and presents the data collected from the inputs in tabular format. These categories predominantly correspond to the issues outlined in the Issues Notes, although additional insights may emerge that are not explicitly tied to the points identified in those documents.

### **Part 4 – Summaries** [reading time: 60 min]

This part offers a detailed synthesis of the inputs gathered from both MSs and non-MSs. Inputs have been systematically categorised into specific clusters that align with the structure of the Issues Notes. Each cluster endeavours to capture the essence of the feedback and insights shared by each contributor.

# Part 1 – Executive Summary

## Workstream I: Framework Convention

### General Comments

- **Close vs Open List of Commitments:** There is a debate on whether the list of commitments should be open-ended, allowing for additional commitments beyond those explicitly listed, or if it should be confined to the enumerated commitments due to capacity and time constraints faced by the Intergovernmental Negotiating Committee (INC).
- **Relationship with Other Agreements:** Clarifying the interactions between the FC, its protocols, and other international commitments is crucial. This includes whether each commitment requires a corresponding protocol, if a protocol can address multiple commitments, and if commitments can be implemented by member states in ways that respect their national sovereignty but do not entail joining a protocol.
- **Proposals for Different Approaches:** Some proposals suggest improving the current legal structures rather than replacing them entirely, to avoid uncertainty and double taxation for businesses. This approach involves starting with the OECD's two-pillar solution and modifying it to align with the interests of developing nations.
- **Methodology:** There is a call to prioritize principles, objectives, and organizational components of the FC, rather than focusing solely on commitments. Some inputs suggest establishing a new governance system that promotes inclusivity and addresses global tax challenges.
- **Optionality of Protocols:** While protocols are optional, some argue that if a protocol is critical, it should not remain optional within the context of public international law.
- **Drafting Language:** There is a preference for high-level, broad language that allows for flexibility and adaptability, with legal obligations delegated to protocols. This approach aims to ensure inclusivity and resilience for the future.

### (10(a)) Draft Commitment on Effective prevention and resolution of tax disputes

1) “A statement recognising the importance of legal certainty to cross-border trade and investment, with the ultimate goal of improving domestic resource mobilisation. It could also include an undertaking to establish dispute prevention and resolution mechanisms that are fair, independent, accessible, and effective in resolving disputes in a timely manner for both taxpayers and the tax authorities involved.” [Issues Notes, para 9]

- **Transfer Pricing (TP) Rules:** The inputs identify flaws within the existing TP rules as a primary cause for disputes and advocate for a comprehensive reform of the system. These reforms are proposed also in relation to the commitment on the fair allocation of taxing rights.

- **Dispute Prevention:** Emphasis is placed on prioritising dispute prevention over resolution to alleviate the burden on sovereign states. This approach aims to reduce the number of disputes that arise and the associated administrative burden.
- **Tax Sovereignty and Human Rights:** Some inputs call for the incorporation of considerations of tax sovereignty and human rights into the commitment.
- **Taxpayer Participation:** The necessity for active taxpayer participation in mechanisms for dispute prevention and resolution has garnered attention. This involvement is seen as crucial for the effectiveness and fairness of these mechanisms.
- **Transparency and Exchange of Information (EOI):** There is a suggestion to include transparency based on the exchange of information (EOI) as an additional characteristic of dispute prevention and resolution mechanisms. This also aligns with the advocacy for transparency, which has been identified as a significant challenge within investor-state dispute resolution frameworks.

## (10(f)) Draft Commitment on Fair allocation of taxing rights, including equitable taxation of multinational enterprises

2) “*The commitment should urge parties to agree on an approach to the allocation of taxing rights that recognizes that every jurisdiction where business activity takes place should share in taxing rights over the income generated from such business activities, while recognizing the value of economic efficiency and tax neutrality, simplicity and administrability and the importance of effects on cross-border trade and investment. There might also need to be some explanation of how to determine where business activity takes place in light of digitalization and other new business models.*” [Issues Notes, para 14]

- **Definitions and Terminology:** There is a debate on defining terms like "fair" and "where business activity takes place". Some inputs caution against narrow definitions due to the lack of widely accepted meanings and suggest addressing these in protocols. Others advocate for precise definitions, including significant economic presence (SEP) and source-based taxation, and prefer the term "profit" over "income".
- **Additional Commitment on Transfer Pricing (TP):** Many inputs, especially from non-Member States, call for replacing the failed transfer pricing system with a new international corporate tax system. This system would tax multinational enterprises (MNEs) based on their global profit (unitary taxation with formulary apportionment) and introduce a minimum effective corporate tax rate.

## (10(c)) Draft Commitment on Sustainable Development

3) “*Taking into account their different capacities, the States Parties agree to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner.*” [Issues Notes, para 17]

- **Enhanced Alignment with the ToR:** Many inputs emphasise the need for further discussion on this commitment and recommend aligning the phrasing with the current wording of paragraph 10(c) of the ToR.
- **Compromiso de Sevilla:** Numerous inputs call for aligning this commitment with the Compromise of Sevilla, which emerged from The Fourth International Conference on Financing for Development (FfD4).
- **Guiding Principles and Sub-Commitments:** Many contributions, particularly from non-member states, stress the importance of commitments being informed by the "principle of common but differentiated responsibilities and respective capabilities (CBDR\_RC)" and the "principle of special and differentiated treatment for developing countries". There is also a proposal for a sub-commitment focused on implementing progressive environmental taxation, aligned with the "polluter pays" principle, as part of the overarching commitment to taxation and sustainable development.

## Workstream II: (Early) Protocol I on Taxation of Services

### Issue (a): Additional considerations for the workstream's discussions

- **Transfer Pricing:** There is shared dissatisfaction with the underlying rules and principles of TP more than with the actual complexity of their implementation.

### Issue (b): New rules for the taxation of services

- **Value Creation and Significant Economic Presence (SEP):** While there are concerns about the lack of a definition for "value creation", there is significant convergence towards SEP as a nexus for taxation.

### Issue (c): Scope and Approach of the Protocol

- **Scope:**
  - **Services Covered:** There is convergence on the broadest scope for services covered.
  - **Taxes Covered:** There is convergence towards including a substance-based approach that looks at the nature of a tax and includes only taxes on income. However, there is some lack of clarity as to whether this would include Digital Services Taxes (DSTs), as opinions differ on whether DSTs are considered a tax on income.
- **Approach:**
  - **Shared Taxing Rights:** There is general convergence towards the shared allocation of taxing rights. However, there is no clear agreement on which factors should be considered, with some advocating for significant weight to be given to the market, user contributions, and consumers, while others caution against giving too much weight to markets, as they would coincide with the Global North.

## Workstream III: (Early) Protocol II on Tax Disputes

### Issue (a): Additional Barriers to the Prevention and Resolution of Tax Disputes

- **Cross-cutting Challenges:**
  - **Transfer Pricing Disputes:** inputs can be categorised into two approaches:
    - **Enhancement of Current System:** Focus on capacity-building initiatives and robust guidelines.
    - **Radical Overhaul:** Advocates for a unitary taxation model, arguing that the existing framework is fundamentally flawed.
- **Prevention of Tax Disputes:**
  - **Legislation Drafting:** Current Model Double Taxation Conventions (DTCs) establish dispute settlement as the default mechanism (ex. Art. 4(3) UNMC), which may contradict clear legislative drafting principles.
  - **Mediation:** Raises concerns and requests for clarification.
  - **Risk Assessment and Information Exchange:** Key tools for fostering dispute prevention.
- **Resolution of Tax Disputes:**
  - **DTC Mandatory Arbitration:** Seen as a means to promote Mutual Agreement Procedure (MAP), not a solution per se.
  - **Investor-State Dispute Settlement (ISDS):** Viewed negatively, with a preference for state-to-state dispute resolution mechanisms.

### Issue (b): Scope of the Protocol

- **Cross-border vs Domestic Disputes:** Convergence towards focusing on cross-border disputes, with non-legally binding best practices, and support for domestic disputes in countries that require assistance.
- **Coordination with Other DTCs: Divergent perspectives on the Protocol's role:**
  - **Fill DTCs' gaps:** encompass areas that fall outside the purview of existing DTCs, either due to their limitations or because specific countries do not have a DTC in effect.
  - **Complement Existing DTCs:** Enhance their efficacy.
  - **Supplant Bilateral DTCs:** Establish a multilateral framework.

### Issue (c): Optionality in the Protocol

- **General Acceptance:** Optionality is seen as a mechanism to safeguard national sovereignty while accommodating countries with varying circumstances and capacities.
- **Baseline Obligations:** Despite its general acceptance, this approach is typically accompanied by a baseline list of standard obligations that are expected to be uniform

across all signatories to the Protocol. The overarching objective is to facilitate a gradual convergence towards a more cohesive approach.

- **Risks of Fragmentation:** A limited number of contributions highlight potential risks associated with optionality.

# Part 2 – Main Findings

## 1 WS I

### General Comments

- **Close vs open list of commitments:** with regard to the reference to commitments within the ToR, a significant number of inputs<sup>2</sup> highlight the open phrasing and the non-exhaustive nature of the list of commitments, as evidenced by the inclusion of the term "inter alia". This would mean that INC's work should not be confined to addressing only the commitments explicitly listed but may also contemplate additional commitments. Conversely, another group<sup>3</sup> advocates for maintaining a focus limited to the enumerated commitments, citing the constraints of capacity and time faced by the INC.
- **Relationship with other agreements:** a significant number of inputs<sup>4</sup> underscore the significance of clarifying, at an early stage, the interactions among the following: (i) the Framework Convention (FC) and the Protocol; (ii) among various protocols; (iii) between the FC/Protocols and other international commitments; and (iv) between protocols and commitments. While the first three interactions have been raised in inputs pertaining to other WSs, the latter is distinctly relevant to WS I. This highlights the ambiguity surrounding the interaction between commitments and protocols. Specifically, there are critical inquiries regarding whether each commitment necessitates a corresponding protocol, whether a protocol can effectively address multiple commitments, and whether commitments could be implemented by member states in other ways (that respect their national sovereignty)<sup>5</sup>, rather than solely through adherence to a protocol, particularly in light of the optional nature of protocols compared to the obligatory nature of the FC.

Some<sup>6</sup> formulate proposals to address the relationship between competing or contradictory global standards, which may result in uncertainty and double taxation for businesses. Instead of entirely replacing the existing legal framework, a more effective approach may involve improving the current legal structures. These proposals delineate avenues for the UN to progress without engendering a complete rift with the OECD, which could potentially render the proposed FC unfeasible. The proposal begins from the assumption that the existing UN model is approximately 80% analogous to the OECD model, albeit with significant differences. By adopting this strategy, the UN could initiate with the OECD's two-pillar solution and modify it to align with the interests of developing countries.

### Methodology

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<sup>2</sup> AG, GHA, MAR, NGA, SWE; ATAF, AU.

<sup>3</sup> AUT, IRL.

<sup>4</sup> ([AUT, BEL, CZE, FRA, IRL, ITA, NGA, PRT, RUS, SAU, SGP, GBR] [ATAF, AU, ATM, AYR, GATJ, GTG, TJN])

<sup>5</sup> NOR.

<sup>6</sup> Avyh-Yonha.

- **Starting with commitments:** in considering the approach adopted by WS, which commences with commitments, a **significant number of inputs**<sup>7</sup> underscore the necessity of prioritising alternative aspects of the FC. These aspects include principles, objectives, and organisational components. These inputs advocate for an emphasis on principles and objectives, particularly regarding paragraph 13 of the ToR, as well as the procedural, institutional, and governance framework. **Another group**<sup>8</sup> invite to give them equal attention.
- **Another group**,<sup>9</sup> delineates various potential approaches. Some inputs advocate for the complete disregard of commitments at this stage, perceiving the INC and the FC as a unique opportunity to address the governance issues that underlie global discontent among developing countries. In circumstances where the existing legal framework lacks inclusivity, rather than concentrating on specific topic-related commitments, the recommendation is to prioritise the establishment of a new governance system that promotes inclusivity and effectively addresses global tax challenges. As the fundamental elements of a framework convention are those that govern cooperation, the modalities of cooperation should be deliberated first, followed by an examination of whether and which commitments should be incorporated into the FC. Commitments should be reserved for a later phase and calibrated to reflect the lowest common denominator among the broadest possible coalition of countries.
- **Optionality:** while paragraph 14 of the ToR stipulates that protocols are optional, **some**<sup>10</sup> contend that if a protocol is deemed sufficiently critical to necessitate simultaneous negotiation, it is peculiar within the context of public international law for it to remain optional.

## Drafting

- High-level vs operational: a **significant number of inputs**<sup>11</sup> advocate for the adoption of broad and sufficiently high-level language that refrains from intricate elaboration and is not self-executing. This approach would facilitate flexibility and adaptability, accommodating future developments and promoting wider alignment among jurisdictions. Legal obligations could then be delegated to protocols. This approach would encourage inclusivity within the FC and enhance its overall acceptance while also ensuring its resilience for the future. Conversely, **another group**<sup>12</sup> expresses a preference for commitments that are more descriptive and prescriptive, capable of being operationalised effectively.

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<sup>7</sup> (AG, CZE, GBR [CESR, ICC]), AG, AUT, DEU, GHA, ITA, MAR, NGA, SEN, SGP, [GTG, SC, TJN].

<sup>8</sup> ATAF, AU.

<sup>9</sup> Ongler, Avy-iona, SC. SC: “The FC can solve the essential problem of governance by providing a statutory basis for international tax cooperation that is based on the principles contained in para 9 of the ToR”.

<sup>10</sup> TJNA.

<sup>11</sup> ([AG, AUT, BEL, CHN, COL, CZE, GHA, IRL, ITA, MAR, NL, NGA, SEN, SGP, SWE, GBR] [ATAF, AU, ETFE, SC])

<sup>12</sup> BRA, IDN, CHE, [GATJ].

## (10(a)) Draft Commitment on Effective prevention and resolution of tax disputes

- **TP, prevention, sovereignty and taxpayers' participation:** inputs<sup>13</sup> frequently identify flaws within the existing TP rules as a primary cause for disputes and advocate for a comprehensive reform of the system. Such reforms are proposed in relation to the commitment on fair allocation of taxing rights. **Some**<sup>14</sup> emphasise the importance of prioritising dispute prevention over resolution in order to alleviate the burden on sovereign states. Additionally, **some**<sup>15</sup> call for the incorporation of considerations of tax sovereignty and human rights into the commitment. Furthermore, the necessity for active taxpayer participation in mechanisms for dispute prevention and resolution has garnered attention from **some**<sup>16</sup>. Lastly, **some**<sup>17</sup> suggest that this commitment should encompass an additional characteristic related to dispute prevention and resolution mechanisms: transparency based on exchange of information (EOI). This suggestion aligns with **some**<sup>18</sup> advocating for the inclusion of references to transparency, which has been identified as a significant challenge within investor-state dispute resolution frameworks.

## (10(f)) Draft Commitment on Fair allocation of taxing rights, including equitable taxation of multinational enterprises

- **Definitions and terminology:** A significant number of inputs<sup>19</sup> express caution regarding the effort to define terms such as "fair", "where business activity takes place", and other terms. This suggestion arises from the absence of widely accepted definitions for these terms and the potential risk of constraining the commitment through overly narrow language. They note that it may be more fitting to address these subjects and the corresponding allocation rules within the context of established protocols. Conversely, **another group**<sup>20</sup> advocates for more precise definitions of "where business activity takes place" and proposes the inclusion in the commitment of explicit references acknowledging significant economic presence (SEP) and source-based taxation as a legitimate basis for taxation. Additionally, **some**<sup>21</sup> also call for a stringent approach concerning the terminology utilised, particularly between "profit" and "income", with suggestions to favour the term "profit" over "income".
- **Additional Commitment on TP:** a significant number of inputs<sup>22</sup> (from non-Member States) call for the inclusion in the FC of a commitment replace "the failed transfer pricing system by developing and implementing a new international

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<sup>13</sup> ETFE, [FTC], [TJN].

<sup>14</sup> [TJN].

<sup>15</sup> (GBR).

<sup>16</sup> ICC.

<sup>17</sup> RUS.

<sup>18</sup> TJNA.

<sup>19</sup> AG, BEL, CZE, GHA, IRL, IRL, ITA, MAR, SGP, SWE, [ATAF, AU, GTG, ICC, SC].

<sup>20</sup> COL, IDN, RUS, STP, [ETFE, ITUC & PSI]

<sup>21</sup> PRT.

<sup>22</sup> [GATJ, ICRICT, UK NGOs, TJN, TJNA, GP, FTG, BCRE].

corporate tax system that taxes MNEs as coherent entities, on the basis of their global profit (also known as unitary taxation with formulary apportionment), supplemented by the introduction of an ambitious minimum effective corporate tax rate".

## (10(c)) Draft Commitment on Sustainable Development

- **Enhanced Alignment with the ToR: A significant number of inputs<sup>23</sup>** emphasize the necessity for further discussion on this commitment and recommend that the phrasing be aligned with the current wording of paragraph 10(c) of the ToR.
- **Compromiso de Sevilla: a significant number of inputs<sup>24</sup>** call for the alignment of this commitment with the Compromise of Sevilla, which emerged from The Fourth International Conference on Financing for Development (FfD4).
- **Guiding principles and sub-commitments:** Numerous contributions, particularly from non-member states, emphasised the necessity for the commitments to be informed by the "principle of common but differentiated responsibilities and respective capabilities (CBDR\_RC)" as well as the "principle of special and differentiated treatment for developing countries". Furthermore, there is a notable proposal for a sub-commitment focused on the implementation of progressive environmental taxation, aligned with the "polluter pays" principle, as part of the overarching commitment to taxation and sustainable development.<sup>25</sup> Academia acknowledges this commitment and underscores the urgent need for prompt action concerning this initiative, as significant progress has already been made in various United Nations forums, resulting in notable agreement.<sup>26</sup>

## 2 WS II

### Gross vs Net Taxation

- Inputs suggest that it could significantly enhance both enforceability and administrative viability for developing countries. Nevertheless, they also add that it may be beneficial to consider the establishment of both minimum and maximum withholding tax (WHT) rates. Implementing a minimum WHT rate could be instrumental in addressing treaty shopping concerns, while setting a maximum WHT rate might serve effectively as a proxy for net taxation. Furthermore, it would be prudent for any gross taxation model to incorporate a requirement for the residence country to provide double taxation relief (DTR) for taxes imposed at the source. Overall, developed countries tend to disagree with the WHT approach. However, we emphasise that a distinction should be made between the method of taxation and the nexus to taxation.<sup>27</sup> Article 12B of the UN MC, while

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<sup>23</sup> BEL, SAU, SGP, CZE, NOR, KOR, ESP, [GTG.]

<sup>24</sup> AU, BCRC, GATJ, ICRIC, TJN, UK NGOs, GP, FTG

<sup>25</sup> [(COL) GATJ, UK NGOs, GP, CERS].

<sup>26</sup> GRA.

<sup>27</sup> See, S. Messina, *Base Erosion as a Nexus to Taxation in the UN MC: A Legal Assessment* (working paper presented at the IBFD Postdoctoral International Tax Forum [PITF], February 2025) [forthcoming].

implementing a nexus based on deduction, does not bind to impose a WHT on gross but allows for net taxation.

- There are also inputs voicing concerns regarding different profit margins associated with different services, the potential for double taxation, investment restrictions, and the effects of gross-up clauses on consumers. Additionally, the proliferation effects of Most-Favoured-Nation (MFN) clauses warrant careful attention, particularly in relation to gross-based WHT. A pertinent example was provided with respect to Nigeria's treaty with the United Kingdom, where the elimination of withholding taxes on technical services led to MFN clauses in existing treaties extending this preferential treatment to several other countries. Such cascading effects could significantly amplify revenue implications beyond what was originally envisioned in the bilateral agreement, emphasising the importance of thoughtful deliberation in these matters. We report on another notable MFN case: the Colombian case. After the entry into force of the DTC with the United Kingdom, the MFN clause of DTCs with three key trade partners of Colombia could have been triggered, thereby leading to severe revenue losses for the country. The case has raised significant attention in Colombia.<sup>28</sup>

### **DTCs obligations**

- In relation to the outlined issue of the restrictive effects of Double Taxation Conventions (DTCs) on domestic taxation, inputs note that DTCs are designed to support trade and investment. Moreover, DTCs allocate taxing rights among countries in accordance with what was agreed upon by the negotiating countries. However, concerns were also raised regarding the absence of concrete evidence demonstrating that DTCs effectively promote investment and trade. Additionally, it was noted that developing countries may face challenges due to the substantial external influences exerted by certain international organisations and the potential disparities in negotiating power when engaging with specific partners. These factors may impact the negotiation process for DTCs and the commitments undertaken by developing countries. Concerning the role of DTCs it seems important that WS II takes into account what is noted in WS III's issues notes. WS III commend the contribution of DTCs in the processes of dispute resolution and prevention and fostering legal certainty "for millions of transactions that take place every day, facilitating cross-border trade and investment" (para 20).

### **Transfer pricing and the Arm's length principle**

- Contributors generally submit that the challenge lies not in the implementation of existing rules, but rather in their inherent shortcomings. There is a favour towards exploring the development and implementation of a new international corporate tax system grounded in unitary taxation and formulary apportionment to effectively address the issues associated with the current transfer pricing system. We note that this comment may extend beyond the scope of WS II, as it would encompass not only the taxation of income from the provision of cross-border

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<sup>28</sup> N. Quiñones & D. Quiñones Cruz, Colombia - Global Tax Treaty Commentaries – Country Policy & Practice, Country Tax Guides IBFD, 2025 update [forthcoming]; N. Quinones, Context, purpose, and literal interpretation: The Colombian MFN case, in Tax Treaty Case law around the Globe 2025, (M. Lang ed., WU, in press) [forthcoming].

services, but more broadly, business profits and corporate income taxation rules. This might also entail a revision of domestic corporate income tax laws.

## Nexus and Justifications

- While many express concerns about the absence of a clear definition for “value creation”, there is a noteworthy trend toward the significant economic presence approach as a nexus to taxation. The G-24's commitment to progressively adopting this approach represents a notable example. Nonetheless, inputs also caution against relying primarily on markets as a determining criterion, as they are typically found in Global North countries. In evaluating the possible justifications, it is noted that there are no compelling tax policy reasons to favour one nexus rule over another. This decision ultimately seems to be more about political considerations. We note that this subject needs careful coordination with WS I, although not necessarily with the commitments. It seems essential to clarify whether the principles governing the allocation of taxing rights on services should be defined within the specific protocol or established in the FC and subsequently implemented through the protocol. The latter approach may induce discord among states, as some may be hesitant to reach an agreement, potentially compromising the inclusivity of the FC. Nevertheless, addressing this matter at the level of the FC may facilitate the adoption of consistent approaches for the taxation of various income streams and other forms of wealth that the FC intends to address, such as the taxation of the digital economy (paragraph 16(a)), high net worth individuals (paragraph 16(d)), and taxation of consumption (paragraphs 9(a) and (d)).

## Scope

- Services covered: Inputs show convergence on the broadest scope for services covered. A minor group suggests differentiation based on various criteria, such as adherence to the DTC models or the classification of services as either inter-company or those provided through digital channels. Additionally, a distinction that has allegedly been overlooked in the issue notes, as highlighted by stakeholder inputs, pertains to the differentiation between dependent and independent personal services and the potential for disparate treatment of these categories. Overall, the approach of differentiated treatment raises concerns regarding the complexities associated with classification, thereby introducing opportunities for arbitrage in qualification that could lead to misuse. Moreover, such differentiation may also have implications for neutrality. While we refer the reader to the *Report on the thirtieth session of Experts on International Cooperation in Tax Matters* and the work of the UN Committee of Tax experts in adopting Article 12AA in the 2025 UN MC update, we also note that the 2025 update still maintains a distinction between three categories: "royalties", "services", and "automated digital services". This differentiation poses challenges and complexities that the INC may be willing to carefully consider.
- Taxes covered: In terms of taxes covered, there is a noticeable trend towards adopting a substance-based approach that examines the nature of a tax. Generally, the inputs explicitly indicate a limitation of the scope to taxes on income. While there are indications that some perspectives may be amenable to

a broader scope, they do not include consumption taxes. However, it must be noted that overall, there appears to be a degree of ambiguity regarding whether this nature-based approach would encompass Digital Services Taxes (DSTs) within the scope of the protocol. For some stakeholders, DSTs may be classified as a tax on income, while others seem to disagree. This is notable because international tax scholarship appears to have reached a consensus that the DTCs do not encompass DSTs. This divergence raises an important question regarding the appropriate scope of the protocol: Should it be confined solely to income taxes? We align with some stakeholders' inputs, noting that the taxation of the digitalised economy and the taxation of services (which also includes digital services) ought to be treated in two separate legislative proposals. Taxation of the digitalized economy also includes other forms of taxes such as VAT and transaction taxes. The wording of the ToR instead clearly delineates the protocol's objective scope: "taxation of **income** derived from the provision of cross-border services in an increasingly digitalized and globalized economy" (emphasis added).

- While Value Added Taxes (VAT) and other forms of taxation are critical components of the tax mix and represent a primary source of revenue for many developing countries, they may not be suitable subjects for inclusion within this protocol. Nonetheless, it seems desirable that they be addressed within the FC. For example, VAT functions as a transaction tax that is contingent upon the existence of supplies; without supplies, the collection of VAT would be compromised, potentially resulting in significant revenue losses. Accordingly, if a rule pertaining to income taxation inadvertently influences supplies, this could have severe implications for VAT revenues. Conversely, establishing a VAT system that incentivises businesses to register – for instance because this allows them to deduct input VAT – may drive businesses into the formal economy. This formalisation is often a critical initial step towards their identification for other tax purposes. Additionally, the regressive nature of VAT can exacerbate issues of equality; this concern may be mitigated by adopting a mixed approach that encompasses both consumption and income taxes. Thus, it seems essential to consider income taxes, consumption taxes, and wealth taxes in an integrated manner.

## Approach

- Shared taxing rights: the approach is generally convergent towards the shared allocation of taxing rights between residence and source. However, one member state voiced its strong disagreement with the issues notes statement that "[o]verall the workstream was moving towards consideration of shared taxing rights with respect to income from the provision of services". Still, it is also noted that not all services may warrant shared taxing rights, for example, government services.

## 3 WS III

### Cross-cutting challenges

- **Transfer pricing disputes:** with respect to the TP disputes highlighted in the Issues Notes, stakeholder inputs – from member states and non-member states – can be categorized into two distinct approaches. The first group advocates for reforms that aim to enhance the current system primarily through capacity-building initiatives and the establishment of more robust guidelines. In contrast, the second group proposes a radical overhaul of the existing TP and ALP framework, advocating for a unitary taxation model. This perspective argues that the foundational concepts of the existing TP framework are inherently flawed and necessitate a comprehensive re-evaluation.

### **Prevention of tax disputes**

- **Legislation Drafting:** The existing framework of Model Double Taxation Conventions establishes dispute settlement as the default mechanism for the application of several provisions. Therefore, DTCs are drafted with the expectation that dispute resolution will serve as an intrinsic process for implementing these rules. Such a methodology may contradict the principle of employing clear legislative drafting to avert disputes. Furthermore, **this approach could significantly vitiate the data** concerning the spread in MAPs, as not all MAPs may represent pathological events; they may instead arise from the typical application of the rules (ex. Article 4(3) OECD and UN MC).
- **Mediation:** the mediation mechanism seems to raise concerns and requests for clarification.
- **Risk assessment and information exchange** are generally called upon as key tools to foster dispute prevention.

### **Resolution of tax disputes**

- **DTC mandatory Arbitration**, when not seen as incompatible with domestic constitutional constraints, is not seen as a solution per se but as a means to promote MAP.
- **ISDS:** There is a notable trend towards viewing the investor-state dispute resolution mechanism as a negative experience that should not be replicated. Furthermore, findings indicate a preference for a dispute resolution system that is distinct from existing frameworks, such as those under Free Trade Agreements (FTAs), International Investment Agreements (IIAs), the General Agreement on Tariffs and Trade (GATT), and the General Agreement on Trade in Services (GATS). Overall, there is a discernible inclination towards state-to-state dispute resolution mechanisms. However, it remains unclear whether this inclination takes into account both considerations of potential revenue losses and taxpayers' access and participation in dispute resolution mechanisms.

### **Scope**

- **Cross-border vs domestic:** there is convergence towards the approach of concentrating primarily on cross-border disputes, while also offering non-legally binding best practices, guidelines, and support for domestic disputes in countries that require assistance.
- **Protocol II vs DTC:** on the coordination with other DTCs, several divergent perspectives appear to arise from varying interpretations of the Protocol's role. Some stakeholders contend that the Protocol should (1) encompass areas that fall outside the purview of existing DTCs, either due to their limitations or because

specific countries do not have a DTC in effect. Conversely, others argue that the Protocol should (2) enhance the efficacy of DTCs, thereby serving as a complement to them. Additionally, another viewpoint suggests that the Protocol should (3) establish a multilateral framework intended to supplant the current system of bilateral DTCs. With respect to the relationship between this protocol and the FC, it is important to recognise that the inputs frequently lack clarity regarding the scope of both documents and their potential overlap. Notably, the ToR references disputes on three occasions (paragraphs 10, 13, and 16), each in a distinct context. Paragraph 10 delineates commitments and explicitly mentions the "effective prevention and resolution of tax disputes". In alignment with this, paragraph 16, which enumerates potential subjects of the second early protocols, also discusses the "prevention and resolution of tax disputes". In contrast, paragraph 13, categorised under the "other elements" heading, refers to a "dispute settlement mechanism". This suggests a significant distinction: the terms "tax" and "prevention" are omitted from paragraph 13. Consequently, this implies a different scope for the dispute settlement mechanism under paragraph 13, which would serve to address conflicts arising from the interpretation and application of both the FC and its associated protocols (refer to paragraph 6). This mechanism would thus serve as a critical component of the governance framework of the FC since it would serve as an essential tool, providing a fundamental support structure for the overall functionality of the new international tax architecture currently being developed under the auspices of the UN.

## Approach

- **Optionality:** there is broad convergence on optionality as a tool to foster agreement and safeguard states' sovereignty. Concerns arise with respect to this, leading to fragmentation and the frustration of any effectiveness of conclusions reached. A possible approach suggested by some inputs would be to provide for a minimum standard of non-optional obligations, followed by some that would be optional. While we remind that paragraph 14 of the ToR used the term "option" to refer to each party to the FC having "the option whether or not to become party to a protocol on any substantive tax issues", there seems to be no mention with respect to the optionality of the obligations outlined within a protocols.

# Part 3 – Workstreams Inputs: Data Overview

- A total of 29 MS and 35 non-MS submitted inputs. Only AUT, CHN, and TUN from MS submitted one input each, covering all three workstreams. WS I received the most inputs overall, both in quantity and page count, from both MS and non-MS. Workstream I has received the most input from academia and civil society. Generally, the number of inputs from MS and non-MS tends to be similar across workstreams. However, WS III stands out with a significant difference between inputs from MS and non-MS.

## Total inputs by group and per Workstream

Author	WS I	WS II	WS III	Total
Total	56	49	39	144 inputs
MS	29	25	23	77
Total non-MS	27	24	16	67
Int Org	5	6	5	490p
Civil Soc. and Academia	20	15	8	
Businesses and others	2	3	3	

## List of Inputs

n.	Abbreviation	Full name	WS I	WS II	WS III
1.	ATAF	African Tax Administration Forum	[5p]	[5p]	[4p]
2.	ATM	William Byrnes & Pramod Kumar Siva, Texas A&M Uni School of Law	[2p]	[4p]	[1]
3.	AU	African Union	[4p]	[4p]	[3p]
4.	AYR	Avi-Yonah Reuven	[4p]	n.a.	n.a.
5.	BCRE	Brazilian Campaign Right to Education	[5p]	n.a.	n.a.
6.	BEPS MG	The BEPS Monitoring Group	n.a.	[6p]	[6p]
7.	BJA	Brian J. Arnold	n.a.	[4p]	n.a.
8.	CESR	Center for Economic and Social Rights	[7p]	n.a.	n.a.
9.	CFS UniN	Committee on Fiscal Studies, Uni of Nairobi	n.a.	[10p]	n.a.
10.	ETFE	Espacio de Trabajo para una Fiscalidad con Equidad	[7p]	[6p]	[5p]
11.	FTC	Financial Transparency Coalition	[5p]	n.a.	n.a.
12.	F & F	Forest & Finance Coalition	[3p]	n.a.	n.a.
13.	G-24	Group of Twenty Four	n.a.	[8p]	n.a.
14.	GATJ	Global Alliance for Tax Justice	[9p]	[8p]	[5p]

15.	GRA	Grau Ruiz Amparo	[4p]	n.a.	n.a.
16.	GP	Green Peace	[6p]	n.a.	n.a.
17.	GTG	Glob Tax Gov	[5p]	n.a.	n.a.
18.	IBFD	IBFD Centre for Studies in African Taxation	n.a.	[6p]	[6p]
19.	ICC	International Chamber of Commerce	[5p]	[5p]	[4p]
20.	ICRICT	Independent Commission for the Reform of the International Corporate Taxation	[6p]	[5p]	n.a.
21.	ITUC & PSI	Global labour movement	[4p]	[4p]	[2p]
22.	KPMG	Klynveld Peat Marwick Goerdeler	[2p]	[2p]	[2p]
23.	REDFIS	Latin American and Caribbean Network for Sustainable Climate Finance	[7p]	n.a.	n.a.
24.	NFTC	National Foreign Trade Council	n.a.	[3p]	n.a.
25.	OECD (CTPA)	OECD Center for Tax Policy and Administration (CTPA)	[3p]	[2p]	[4p]
26.	PL	Poubel Lucas	n.a.	n.a.	[4p]
27.	RR	Radhakishan Rawal	n.a.	[2p]	n.a.
28.	SC	South Centre	[4p]	[3p]	[3p]
29.	TJN	Tax Justice Network	[9p]	[8p]	[9p]
30.	TJNA	Tax Justice Network Africa	[6p]	[5p]	n.a.
31.	TWN	Third World Network	n.a.	[3p]	n.a.
32.	UK NGOs	UK NGOs	[6p]	n.a.	n.a.
33.	WATAF	West African Tax Administration Forum	[1p]	[2p]	[2p]
34.	YTJN	Youth For Tax Justice Network	[1p]	[1p]	[2p]
35.	YX	Yan Xu – Uni of New South Wales, Australia	n.a.	[6p]	n.a.
X	Total inputs/pages per WS		27/120	24/112p	16/62p

n.	Abbreviation	Country	WS I	WS II	WS III
1.	AG	Africa Group	[3p]	[4p]	[3p]
2.	AUT	Austria	[4p]	same	Same
3.	BEL	Belgium	[3p]	[3p]	[2p]
4.	BRA	Brazil	[4p]	[3p]	n.a.
5.	CHN	China	[2p]	same	same
6.	COL	Colombia	[2p]	[2p]	[2p]
7.	CZE	Czechia	[4p]	[1p]	[1p]
8.	FRA	France	[2p]	[2p]	[2p]
9.	DEU	Germany	[2p]	[3p]	[3p]
10.	GHA	Ghana	[3p]	n.a.	n.a.
11.	IDN	Indonesia	[4p]	[3p]	[2p]
12.	IRL	Ireland	[3p]	[4p]	n.a.
13.	ITA	Italy	[3p]	[2p]	[2p]
14.	MAR	Morocco	[2p]	n.a.	[2p]
15.	NLD	Netherlands	[1p]	[2p]	[1p]

<b>16.</b>	NGA	Nigeria	[3p]	[3p]	[3p]
<b>17.</b>	NOR	Norway	[4p]	[4p]	[3p]
<b>18.</b>	PRT	Portugal	[3p]	n.a.	[2p]
<b>19.</b>	KOR	Republic of Korea	[3p]	[2p]	[3p]
<b>20.</b>	RUS	Russian Federation	[2p]	[2p]	[2p]
<b>21.</b>	STP	Sao Tome and Principe	[2p]	[3p]	[4p]
<b>22.</b>	SAU	Saudi Arabia	[3p]	[2p]	[3p]
<b>23.</b>	SEN	Senegal	[3p]	[3p]	[2p]
<b>24.</b>	SGP	Singapore	[4p]	[4p]	[1p]
<b>25.</b>	ESP	Spain	[1p]	[1p]	[3p]
<b>26.</b>	SWE	Sweden	[3P]	[4p]	[2p]
<b>27.</b>	CHE	Switzerland	[2p]	[1p]	[1p]
<b>28.</b>	TUN	Tunisia	[3p]	same	same
<b>29.</b>	GBR	United Kingdom	[2p]	[4p]	[5p]
<b>X</b>	Total inputs/pages per WS		29/80	23/62	23/54

# 1 Workstream I: Framework Convention

- Out of the 9 inputs addressing this question, 7 were in favour of considering additional commitments and 2 noted time and capacity constraints.

Consider any additional commitments that are not listed?			
MS	Answer	Non-MS	Answer
1. AG	Yes	8. ATAF	Yes
2. AUT	No	9. AU	Yes
3. GHA	Yes		
4. IRL	No		
5. MAR,	Yes		
6. NGA	Yes		
7. SWE	Yes		

- Out of the 19 inputs pertaining to this subject, 18 indicated agreement. Although this does not represent a majority of the total inputs, the data suggest a predominant convergence among inputs from the MSs, with 12 out of 19 inputs addressing this topic. Notably, within this group, 11 MS (majority of the total 19 inputs from MS) expressed desire to address this subject at an early stage.

Does the relationship with other agreements need to be addressed now?			
MS	Answer	Non-MS	Answer
1. AUT	Yes	13. ATAF	Yes
2. BEL	No	14. ATM	Yes
3. CZE	Yes	15. AU	Yes
4. FRA	Yes	16. AYR	Yes
5. IRL	Yes	17. GATJ	Yes
6. ITA	Yes	18. GTG	Yes
7. NGA	Yes	19. TJN	Yes
8. PRT	Yes		
9. RUS	Yes		
10. SAU	Yes		
11. SGP	Yes		
12. GBR	Yes		

- Among the 18 inputs (predominantly from MSs) pertaining to this methodological question, 16 concur that priority should be given to other aspects of the FC. These aspects include principles, objectives, and the procedural, governance, and institutional elements outlined in paragraph 13. Conversely, 2 inputs express agreement with the overarching approach. However, they also advocate for the simultaneous development of other essential elements of the FC.

Do you concur with the methodology utilised to initiate with commitments?			
MS	Answer	Non-MS	Answer
1. AG	NO	12. ATAF	Yes (but)

2. AUT	NO	13. AU	Yes (but)
3. CZE	NO	14. CESR	NO
4. DEU	NO	15. GTG	NO
5. GBR	NO	16. ICC	NO
6. GHA	NO	17. SC	NO
7. ITA	NO	18. TJN	NO
8. MAR	NO		
9. NGA	NO		
10. SEN	NO		
11. SGP	NO		

- Among the 24 inputs addressing this question, 20 indicate that commitment drafting should remain broad and high-level while avoiding self-executing provisions. Conversely, 4 inputs express a preference for a more detailed and operational approach.

Should commitments be drafted in a high-level, broad, and non-self-executing manner?			
MS	Answer	Non-MS	Answer
1. AG	YES	20. ATAF	YES
2. AUT	YES	21. AU	YES
3. BEL	YES	22. ETFE	YES
4. BRA	NO	23. GATJ	NO
5. CHN	YES	24. SC	YES
6. COL	YES		
7. CZE	YES		
8. GHA	YES		
9. IDN	NO		
10. IRL	YES		
11. ITA	YES		
12. MAR	YES		
13. NL	YES		
14. NGA	YES		
15. SEN	YES		
16. SGP	YES		
17. SWE	YES		
18. CHE	NO		
19. GBR	YES		

- Among the 20 inputs addressing this question, 14 expressed a preference for omitting specific definitions of terms. Conversely, 6 inputs advocated for a more comprehensive elaboration of definitions, along with a clear recognition of key tax allocation principles.

Should the commitment define the terms “fair” and “where business activity takes place”?

MS	Answer	Non-MS	Answer
1. AG	NO	14. ATAF	NO
2. BEL	NO	15. AU	NO
3. COL	YES	16. ETFE	YES
4. CZE	NO	17. GTG	NO
5. GHA	NO	18. ICC	NO
6. IDN	YES	19. ITUC & PSI	YES
7. IRL	NO	20. SC	NO
8. ITA	NO		
9. MAR	NO		
10. RUS	YES		
11. SGP	NO		
12. STP	YES		
13. SWE	NO		

## 2 Workstream II: (Early) Protocol on Taxation of Services

- 20 inputs specifically addressed tax nexus issues related to SEP and VC. 10 advocated for SEP, three for VC, while those opposing both generally favoured a withholding tax similar to Article 12AA of the UN MC 2025.

Tax Nexus					
1.	BEL	No VC	12.	AU	SEP
2.	COL	SEP	13.	BEPS MG	VC + SEP
3.	FRA	NO SEP	14.	BJA	NO VC + NO SEP
4.	IDN	SEP + NO VC	15.	ETFE	SEP
5.	IRL	VC	16.	G-24	SEP
6.	ITA	VC	17.	ICRICT	SEP
7.	NGA	SEP	18.	TJN	NO VC
8.	NOR	NO VC	19.	TJNA	NO VC
9.	RUS	NO SEP + NO VC	20.	YX	SEP
10.	STP	SEP			
11.	SGP	NO VC			

- 15 inputs discussed gross versus net taxation. 6 identified net taxation as essential for international tax law. 9 instead expressed willingness to consider gross taxation, at least in an initial stage, to support developing countries.

Gross vs Net taxation					
1.	IRL	NET	6.	ATAF	GROSS
2.	ITA	NET	7.	ATM	GROSS
3.	NOR	NET	8.	AU	GROSS
4.	RUS	GROSS	9.	CFS UniN	GROSS
5.	CHE	NET	10.	IBFD	Tiered-approach
			11.	ICC	NET
			12.	ICRICT	Tiered-approach
			13.	NFTC	NET
			14.	RR	GROSS
			15.	TJN	GROSS

- 23 inputs discussed the Protocol's scope with respect to services and taxes. Regarding services, there are two main opinions: the majority supports a broad scope, while others prefer a service-by-service (S BY S) classification for taxing rights based on specific service characteristics. For taxes, 14 inputs addressed this issue; while some member states called for further discussion, there is agreement that the protocol should cover income taxes. However, some also advocate that this should entail the inclusion of DSTs as well.

### Scope: Taxes Covered and Services Covered

		Income	BROAD			Income	Broad
1.	CZE		S BY S	12.	ATM		S BY S
2.	DEU		DTC	13.	AU	DST	Broad
3.	IDN	NATURE		14.	BEPS MG		Broad
4.	IRL	FD		15.	BJA		Broad
5.	ITA	FD		16.	CFS UniN	DST	S BY S
6.	NGA	NATURE		17.	IBFD		BROAD
7.	RUS	INCOME	BROAD	18.	ICRICT	DST	BROAD
8.	SAU		S BY SS	19.	ITUC & PSI		BROAD
9.	SEN	INCOME	BROAD	20.	SC	INCOME	BROAD
10.	SGP	INCOME	S BY S	21.	TJN	DST	BROAD
11.	SWE		NARROW	22.	TWN	DST	
				23.	YX	INCOME	BROAD

- 21 Inputs addressed the methodological question of the approach that the protocol should take and also the substantive approach to the allocation of taxing rights. While optionality is generally endorsed, some inputs caution against fragmentation risks. On the allocation of taxing rights some states still are not of the view that there has been agreement on adopting a shared taxing rights approach to the taxation of cross-border services.

Approach to obligations and allocation of taxing rights							
		Optionality	Shared			Optionality	Shared
1.	AG	Optionality	Shared	12.	ATAF	Optionality	Shared
2.	BEL	Optionality		13.	ATM	Optionality	Shared
3.	BRA	Optionality		14.	BJA		Shared
4.	FRA	Optionality		15.	CFS UniN	Optionality	
5.	NLD		NO	16.	EFTE		Shared
6.	RUS		Shared	17.	G-24	Optionality	Shared
7.	SEN	Optionality		18.	IBFD	Optionality	Shared
8.	SGP	Optionality		19.	ITUC & PSI	Optionality	Shared
9.	ESP		NO	20.	SC	Optionality	
10.	ITA			21.	TJNA	Optionality	Shared
11.	NLD		NO				

### 3 Workstream III: (Early) Protocol II on Tax Disputes

#### 3.1 Issue (a): whether there are additional barriers to the prevention and resolution of tax disputes that Member States encounter

- Dispute prevention/resolution mechanisms: propensity (yes) or adversity (no)

n.	MS	DTC MAP	DTC Arbitration	IIA Arbitration	Other
1.	AG	n.a.	n.a.	No	Bi-multi- St-to-St
2.	BEL	Yes	n.a.	n.a.	n.a.
3.	COL	n.a.	No	n.a.	n.a.
4.	CZE	Yes	n.a.	n.a.	n.a.
5.	FRA	n.a.	Yes	n.a.	Yes (APAs)
6.	DEU	Yes	Yes	n.a.	Yes (APAs)
7.	IDN	Yes	No	n.a.	n.a.
8.	ITA	n.a.	n.a.	n.a.	n.a.
9.	MAR	n.a.	No	n.a.	n.a.
10.	NLD	n.a.	n.a.	n.a.	n.a.
11.	NGA	n.a.	No	n.a.	n.a.
12.	NOR	Yes	n.a.	n.a.	Yes (APAs)
13.	PRT	n.a.	n.a.	n.a.	n.a.
14.	KOR	n.a.	No	n.a.	n.a.
15.	RUS	n.a.	n.a.	n.a.	Yes (ICAP)
16.	STP	n.a.	No	n.a.	n.a.
17.	SEN	n.a.	n.a.	No	n.a.
18.	SGP	n.a.	n.a.	n.a.	n.a.
19.	ESP	Yes	Yes	n.a.	Yes (APAs)
20.	SWE	n.a.	n.a.	n.a.	n.a.
21.	CHE	n.a.	n.a.	n.a.	n.a.
22.	GBR	Yes	Yes	n.a.	ADR programme

n.	Non-MS	DTC MAP	DTC Arbitration	IIA Arbitration	Other
1.	ATAF	Yes	No	No	Yes (joint aud.)
2.	ATM	Yes	Yes	n.a.	Yes (joint aud./APAs)
3.	AU	n.a.	n.a.	No	Yes (joint aud./APAs)
4.	BEPS MG	Yes	Yes	No	n.a.
5.	EFTE	n.a.	n.a.	No	n.a.
6.	GATJ	n.a.	No	No	No APAs
7.	IBFD	n.a.	n.a.	n.a.	Yes
8.	ICC	n.a.	Yes	n.a.	Yes (APAs)
9.	ITUC&PSI	n.a.	n.a.	No	n.a.
10.	KPMG	n.a.	n.a.	n.a.	n.a.
11.	OECD(CTPA)	Yes	Yes	n.a.	Yes
12.	PL	Yes	Yes	n.a.	Yes

<b>13.</b>	SC	Yes	No	No	Yes
<b>14.</b>	TJN	Yes	n.a.	n.a.	n.a.
<b>15.</b>	WATAF	n.a.	n.a.	n.a.	n.a.
<b>16.</b>	YTJN	n.a.	n.a.	n.a.	n.a.

### 3.2 Issue (b): whether the protocol should address only tax disputes involving cross-border transactions or also purely domestic disputes

Scope							
n.	MS	Domestic (also)	Cross- border (only)	n.	Non-MS	Domestic (also)	Cross-border (only)
1.	AG	X		24.	ATAF		X
2.	BEL		X	25.	ATM	n.a.	n.a.
3.	COL		X	26.	AU		X
4.	CZE	n.a.	n.a.	27.	BEPS MG		X
5.	FRA		X	28.	EFTE		X
6.	DEU		X	29.	GATJ	n.a.	n.a.
7.	IDN		X	30.	IBFD		X
8.	ITA	n.a.	n.a.	31.	ICC	n.a.	n.a.
9.	MAR		X	32.	ITUC&PSI	n.a.	n.a.
10.	NLD	n.a.	n.a.	33.	KPMG		X
11.	NGA	(limited)	X	34.	OECD(CTPA)	n.a.	n.a.
12.	NOR	n.a.	n.a.	35.	PL	n.a.	n.a.
13.	PRT	n.a.	n.a.	36.	SC		X
14.	KOR		X	37.	TJN		X
15.	RUS	n.a.	n.a.	38.	WATAF	n.a.	n.a.
16.	STP	(limited)	X	39.	YTJN	n.a.	n.a.
17.	SAU		Yes				
18.	SEN	(limited)	Yes				
19.	SGP	n.a.	n.a.				
20.	ESP		X				
21.	SWE		X				
22.	CHE	n.a.	n.a.				
23.	GBR		X				

### 3.3 Issue (c): whether the concept of optionality with respect to mechanisms provided in the protocol is generally acceptable

Optionality Approach					
n.	MS	Optionality	n.	Non-MS	Optionality
1.	AG	Yes	1.	ATAF	Yes
2.	BEL	Yes	2.	ATM	n.a.
3.	COL	n.a.	3.	AU	Yes
4.	CZE	Yes	4.	BEPS MG	n.a.
5.	FRA	Yes	5.	EFTE	Yes
6.	DEU	Yes	6.	GATJ	No
7.	IDN	Yes	7.	IBFD	Yes
8.	ITA	Yes	8.	ICC	n.a.

<b>9.</b>	MAR	Yes	9.	ITUC & PSI	n.a.
<b>10.</b>	NLD	n.a.	10.	KPMG	n.a.
<b>11.</b>	NGA	Yes	11.	OECD (CTPA)	n.a.
<b>12.</b>	NOR	Yes	12.	PL	Yes
<b>13.</b>	PRT	n.a.	13.	SC	Yes
<b>14.</b>	KOR	Yes	14.	TJN	No
<b>15.</b>	RUS	n.a.	15.	WATAF	n.a.
<b>16.</b>	STP	Yes	16.	YTJN	n.a.
<b>17.</b>	SAU	Yes			
<b>18.</b>	SEN	Yes			
<b>19.</b>	SGP	Yes			
<b>20.</b>	ESP	Yes			
<b>21.</b>	SWE	n.a.			
<b>22.</b>	CHE	n.a.			
<b>23.</b>	GBR	Yes			

## Part 4 - Summaries

# Annex on WS I

## 1 WS I: Framework Convention

### 1.1 (10(a)) Draft Commitment on Effective prevention and resolution of tax disputes

“Statement recognising the importance of legal certainty to cross-border trade and investment, with the ultimate goal of improving domestic resource mobilisation. It could also include an undertaking to establish dispute prevention and resolution mechanisms that are fair, independent, accessible, and effective in resolving disputes in a timely manner for both taxpayers and the tax authorities involved.” [Issues Notes, para 9]

**a) Does this commitment address the concerns with respect to effective prevention and resolution of tax disputes?**

**b) Does this commitment provide sufficient support for the early protocol in WS III?**

**c) Are there additional concerns regarding effective prevention and resolution of tax disputes that should be addressed in that article of the FC?**

MS Inputs	
AG	<ul style="list-style-type: none"><li>• General:<ul style="list-style-type: none"><li>○ expand list of commitments;</li><li>○ discuss also para 13, other elements;</li><li>○ prioritize structural and governance elements;</li></ul></li><li>• 1a) <i>The commitment should be broad enough to allow flexibility and adaptability.</i></li><li>• 1b) <i>Stress more the need for international tax cooperation and not the domestic systems.</i></li><li>• 1c) <i>Commitments should be phrased as broad statements that are neither descriptive nor prescriptive should be adequate.</i></li></ul>
AUT	<ul style="list-style-type: none"><li>• General:<ul style="list-style-type: none"><li>○ the FC should only include high-level commitments, using broad and principle-based language without detailed elaboration.</li><li>○ prioritize more i) the objectives and principles; ii) the required institutional elements; iii) the interaction between FC and Protocols as well as between the Protocols among themselves;</li><li>○ commitments should be high-level and not self-executing.</li><li>○ <b>not realistic to consider commitments on additional subjects.</b> The focus of the WS I discussions should be on what is already included in the ToR and not go beyond it; to make use of the allocated time most efficiently.</li><li>○ in the issues note on Workstream I (at para. 5) it is assumed that a protocol is based on one specific</li></ul></li></ul>

	commitment. However, we think that such a specific link is neither necessary nor practical since any protocol could be anchored more loosely to several commitments;
BEL	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ commitments should remain high-level in nature, allowing flexibility for future development and broader alignment among jurisdictions;</li> <li>○ WS III should be able to advance its work on the prevention and resolution of tax disputes independently of any specific commitments outlined under Workstream I.</li> </ul> </li> </ul>
CHN	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ high-level principles. Detailed and substantive provisions specifying rights and obligations in tax matters should be defined in relevant protocols.</li> </ul> </li> </ul>
COL	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ importance of using broad language in the wording of these guidelines, avoiding restrictive interpretations that may limit the development of the Convention and its commitments, to ensure that the Convention remains stable and effective over time.</li> </ul> </li> </ul>
CZE	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ non-self-executing, broadly framed commitments rather than detailed to enhance inclusivity and allow flexibility for jurisdictions;</li> <li>○ the INC should discuss the goals and principles of the Framework Convention before (or in parallel with) the commitments;</li> <li>○ it necessary that the Framework Convention (and its protocols) are coherent with existing international standards and thus avoid duplication or overlaps;</li> <li>○ the scope of some commitments may overlap;</li> </ul> </li> <li>• 1a) Scope: clarify whether this commitment is intended to cover the topic of prevention and resolution of tax disputes only in relation to the Protocol II.</li> <li>• Add wording to the commitment that would ascertain that no party to the Framework Convention is obliged to sign the Protocol II.</li> </ul>
FRA	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ the relationship between the framework and the protocols, both legally and practically speaking, remains unclear and will have to be specified in the next stages of the process.</li> <li>○ the commitment proposed on this subject by the Framework Convention must be legally and technically aligned with the protocol.</li> <li>○ Optionality: must ensure that these existing dispute resolution instruments remain distinct and do not overlap in their scope or application.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ The proposed mechanisms must not deviate from existing standards, particularly those outlined in the UN and OECD MTC, which serve as key reference points for resolving tax disputes globally.</li> <li>○ New instruments must complement existing solutions without introducing unnecessary complexity or creating legal uncertainty.</li> <li>○ Essential that any new instrument remains optional and non-binding.</li> </ul>
DEU	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ importance of early discussions on governance structures, as outlined in paragraph 13 of the Terms of Reference.</li> </ul> </li> <li>● 1) Support.</li> </ul>
GHA	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ commitments provided in paragraph 10 of the Terms of Reference should be expanded to cater for other pertinent subject areas. Taxation of income from natural resource extraction is one subject.</li> <li>○ Prioritize the development of the structural and governance elements of the Convention.</li> </ul> </li> <li>● 1a) the commitment should provide a flexible, scalable, and non-coercive capacity-sensitive framework for dispute prevention and resolution reflecting the diversity of abilities and legal traditions across member states without being prescriptive. Any specific concerns should be addressed in the protocol.</li> <li>● 1b) The description should stress the need for international tax cooperation and rules for dispute prevention and resolution and not the strengthening of domestic systems.</li> <li>● 1c) A broad statement that is neither descriptive nor prescriptive should be adequate.</li> </ul>
IDN	<ul style="list-style-type: none"> <li>● 1a) the commitments would be more effective if they explicitly acknowledged the asymmetries in capacity between tax administrations in developed and developing countries, and provided for technical assistance to build capacity in dispute management.</li> <li>● 1b) the commitments should ensure that any multilateral mechanism does not infringe on national sovereignty</li> <li>● 1c) declines the use of arbitration to resolve this issue.</li> </ul>
IRL	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ the commitments should all be high-level in nature and avoid conflating commitments with standalone actions or protocols that may be developed under the Convention.</li> <li>○ maintaining a focus on the principles during this scoping exercise and drafting of commitments is useful.</li> <li>○ clarify the interaction between the FC and protocol II.</li> </ul> </li> </ul>
ITA	<ul style="list-style-type: none"> <li>● General:</li> </ul>

	<ul style="list-style-type: none"> <li>○ the FC should contain high – level commitments since the scoping of the provisions, as well as any technical aspects, should be left to the protocols.</li> <li>○ the discussion on the FC, starting from the next sessions of the INC, should be focused on the procedural provisions, including coordination rules aimed at clarifying the relationship with existing legal instruments.</li> <li>● 1a) Add also principles of tax certainty, administrability and stability of the global tax system in order to design the basis for the effective prevention and resolution of tax disputes.</li> </ul>
MAR	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ aligns with the AG.</li> <li>○ the language used in the Framework Convention should be concise and flexible focusing on the principles of fairness and legal certainty, and avoiding overly prescriptive or detailed rules that would be better addressed in the protocols</li> </ul> </li> </ul>
NLD	<ul style="list-style-type: none"> <li>● General:</li> <li>● paragraph 22 of the ToR guides the INC in drafting the FC to take into consideration ongoing and existing work of other relevant forums.</li> <li>● support for reforms to existing fora, such as the OECD/G20 Inclusive Framework, specifically aimed at strengthening their inclusivity and effectiveness through improved operating processes and governance.</li> <li>● the commitments included in the FC should be high level commitments, to achieve a broadly supported outcome.</li> </ul>
NGA	<ul style="list-style-type: none"> <li>● General:</li> <li>● aligns with the AG.</li> <li>● the commitments outlined in the ToR are not exhaustive and should be interpreted in light of relevant UN resolutions. While recognising the prioritisation of early protocols, also a need to address additional commitments;</li> <li>● use of broad and inclusive language is recommended to enable effective international cooperation throughout the negotiation process.</li> <li>● development of the structural and governance elements of the Convention such as the Conference of the Parties, the Secretariat, and Subsidiary Bodies to be prioritised alongside the elaboration of substantive commitments.</li> <li>● Interaction with WS III: the Convention should provide the foundation for the 2nd early protocol in addition to the processes for the settlement of disputes arising from the operation/implementation of the framework convention.</li> <li>● 1a) The commitment described in paragraph 9 does not effectively address the concerns that were expressed in the workstream with</li> </ul>

	<p>respect to effective prevention and resolution of tax disputes. This commitment will benefit from a broad and unrestricted wording and provide an unrestricted foundation for the protocol to specifically provide necessary details on how to achieve an effective prevention and settlement of tax disputes.</p> <ul style="list-style-type: none"> <li>• 1b) A broad and unrestrictedly worded commitment will be beneficial to the protocol being developed in Workstream III.</li> <li>• 1c) No additional concerns.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ develop Explanatory Statements to the Framework Convention and Protocols in parallel with the negotiations of these instruments;</li> <li>○ Member States should have the flexibility to fulfil any commitment in the FC in a manner that aligns with their national circumstances and priorities, including through negotiation of bilateral treaties, participating in existing mechanisms, or adherence to the FC's Protocols. All mechanisms should be deemed equal, and it should remain with MSs to choose how to meet any commitment.</li> </ul> </li> <li>• 1a) Need for more discussion to clarify how the FC can most effectively support various measures to prevent and resolve tax disputes.</li> <li>• 1b) Not yet possible to provide a definitive assessment.</li> <li>• 1c) The commitment should acknowledge that the commitment may be fulfilled through the Protocol, as well as through existing or future bilateral and multilateral instruments.</li> </ul>
PRT	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ no distinction should be made among commitments that are intended to provide support for Protocols and others commitments;</li> </ul> </li> <li>• Suggestions for rephrasing paragraphs 8, 12, 14, and 18.</li> <li>• On Paragraph 14: encourage to assume a more rigorous approach to the use of either “profit” or “income” expressions. Replace the term “income” with “profit”.</li> </ul>
RUS	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ the language of commitments to be rather broad to allow for flexibility and to address all the concerns that have been expressed or could be concerned in future.</li> </ul> </li> <li>• 1a) Include in the commitment an additional characteristic of dispute prevention and resolution mechanisms, namely, transparency based on EOI.</li> </ul>
STP	<ul style="list-style-type: none"> <li>• 1a) Include an explicit reference to the proportionality of the mechanisms and international technical support is essential to ensure these instruments are effective for countries with limited or no treaty networks.</li> </ul>

SAU	<ul style="list-style-type: none"> <li>• 1b) More alignment is needed between the FC and the Protocol II, to avoid duplication or impose additional burdens.</li> </ul>
SEN	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ In August address the provisions of Article 13 which, in the absence of conceptual harmonization based on evidence, could become a potential source of blockage in our future discussions.</li> </ul> </li> <li>• 1a) The commitment should be wide enough to allow the flexibility and adaptability provided for in the terms of reference. These concerns should, at a granular level, be rather addressed in the protocol.</li> <li>• 1b) Take into account constitutional limitations on mandatory dispute resolution mechanisms;</li> <li>• 1c) A general statement, neither descriptive nor prescriptive, should be sufficient to meet the flexibility and adaptability sought in the terms of reference.</li> </ul>
SGP	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ the commitments in the FC should be kept broad, and details on how the commitments should be operationalised, should be addressed in the accompanying protocols.</li> </ul> </li> <li>• 1a) The FC should (a) address the settlement of disputes between State Parties arising from the interpretation or application of the FC and its protocols; and (b) outline broad commitments on preventing and resolving tax disputes in general.</li> <li>• On (a), the FC could include a broad commitment for State Parties to strive to settle disputes on the interpretation or application of the FC through negotiation or any peaceful means of their choice. The protocol could then specify the models for these means, such as arbitration.</li> <li>• On (b), support.</li> <li>• The FC could also include a broad commitment for Member States to agree to work together to achieve the effective prevention and resolution of tax disputes</li> <li>• MSs could commit to settle disputes on the interpretation or application of the FC through negotiation or peaceful means, and undertake to work together to achieve the effective prevention and resolution of tax disputes in a friendly manner.</li> </ul>
SWE	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ any commitments should all be at high-level, not self-executing and non-duplicative.</li> <li>○ it is left to the INC to decide whether to include any additional commitment in the FC “should”.</li> <li>○ attention should be put on commitments that aim to relate or support the early protocols.</li> </ul> </li> </ul>

CHE	<ul style="list-style-type: none"> <li>• 1a) This commitment should not be optional but a necessary commitment. The commitment should include a clear call for action.</li> <li>• 1b) The other proposed content of the commitment being a statement regarding the importance of legal certainty seems not operational and strong enough to justify the development of an early protocol addressing dispute prevention and resolution.</li> </ul>
GBR	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ it would be more productive to begin with the overarching objectives and principles, as the commitments would follow from those earlier elements.</li> <li>○ the language of the FC should be kept high-level to avoid pre-empting the development of the Protocols, and the commitments drafted to be future-proof and with aim to secure the widest consensus.</li> <li>○ we also expect that there may be multiple ways for signatories to meet the commitments in the Framework Convention, and this will of course be necessary given the protocols are intended to be optional.</li> <li>○ prevention and resolution of disputes involving the Convention itself should be dealt with in the Convention. It is important for the Framework Convention to consider the best way to prevent and resolve disputes with regards to the FC itself.</li> </ul> </li> <li>• 1a) Include focus on sovereignty and human rights.</li> <li>• 1c) It is crucial that high-quality economic and legal analysis is carried out to support the discussions, including with regard to the interaction between commitments in this FC and those in other international agreements, and with regard to the impact on global trade.</li> </ul>

Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ “inter-alia”: non-exhaustive list of commitments.</li> </ul> </li> <li>• 1a) No, the commitment section of a treaty, in our view, is not necessarily a place for the elaboration of motivation or justification for the commitment itself. The more effort to include motivation in the commitment, the more circumscribed it becomes, as the commitment will always be construed in the light of those motivations, thereby negating flexibility and adaptability to future circumstances and other related contexts.</li> <li>• 1b) Yes, a broadly framed language committing to fair, inclusive, effective, efficient and timely prevention and resolution of disputes for taxpayers and tax authority, including through the establishment of a mechanism for prevention and resolution, would give the needed base for Protocol 2.</li> </ul>

	<ul style="list-style-type: none"> <li>• 1c) No, the dispute resolution commitments under the FC need not be too detailed or unnecessarily verbose.</li> </ul>
ATM	<ul style="list-style-type: none"> <li>• General on the FC: <ul style="list-style-type: none"> <li>○ A common thread across these workstreams is the need for consensus-based rule-making that complements (and does not contradict) the OECD/G20 initiatives. Competing or contradictory global standards would create uncertainty and double taxation for businesses.</li> </ul> </li> </ul>
AU	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ commend the prioritisation of commitments but emphasise that equal attention must be given to all items set out in the Terms of Reference (ToR), including procedural and institutional matters under paragraph 13. - Commitments should not be limited to paragraph 10 but expanded,</li> <li>○ framed in broad and flexible language that enables differentiated implementation pathways tailored to national contexts.</li> </ul> </li> <li>• 1a) Does not effectively address the concerns. Commitment section of a treaty, in our view, is not necessarily a place for the elaboration of motivation or justification for the commitment itself.</li> <li>• 1b) include a different broader language.</li> <li>• 1c) There are no additional concerns to be included in the commitments as they should be addressed in the Protocols.</li> </ul>
AYR	<p>General:</p> <ul style="list-style-type: none"> <li>• Is there a way for the UN to go forward without a full-fledged rift with the OECD that could render the proposed Framework Convention unworkable? The current UN model is about 80% identical to the OECD model, but with important differences. Following this approach, the UN should begin with the OECD two pillar solution and modify it to suit the interests of developing countries. The author outlines his proposals in this respect.</li> </ul>
CESR	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ commitments should be drafted in order to be fully “aligned with States’ obligations under international human rights law” (paragraph 9.c. of the ToR).</li> <li>○ importance of observing the Convention’s <b>objectives and principles when drafting commitments</b>.</li> <li>○ examples of the implications of the “human rights principle” for commitments are outlined in the input.</li> </ul> </li> </ul>
ETFE	<ul style="list-style-type: none"> <li>• 1a) Incomplete see 1c) below.</li> <li>• 1b) They provide sufficient support as they are sufficiently general in the drafting to allow for a comprehensive approach in WS III. However, more emphasise could be put on dispute prevention.</li> </ul>

	<ul style="list-style-type: none"> <li>• 1c) The inherent subjectivity of the ALP in TP allows MNEs to exploit it for tax avoidance, while also increasing uncertainty in tax compliance and fuelling disputes;</li> </ul>
FTC	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ the existing UN Expert Committee on International Cooperation in Tax Matters should be incorporated as a <b>subsidiary body</b> under the Convention.</li> </ul> </li> </ul>
GATJ	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ some commitments can be included as stand-alone actions, without necessarily being an anchor for a future protocol.</li> <li>○ if the language of a commitment is strong and clear enough, it can be operationalized and implemented through future decisions of the Conference of Parties (COP) – without needing a protocol.</li> <li>○ this approach, which has also been applied in other UN processes, allows for the Convention text to be relatively concise, since the COP can specify the details which operationalize the commitments.</li> <li>○ incorporate the principles related to common but differentiated responsibilities and respective capabilities (CBDRC), as well as special and differential treatment of developing countries into the commitments.</li> <li>○ important to revisit the section on principles.</li> <li>○ the Preamble of the ToR is very short, and we believe a number of references to key UN decisions should be added. In addition to the Compromiso de Sevilla, this includes key UN agreements on human rights, environmental protection, gender equality, and health.</li> <li>○ the existing UN Expert Committee on International Cooperation in Tax Matters should be incorporated as a subsidiary body under the Convention.</li> </ul> </li> </ul>
GP	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>○ align with GATJ.</li> </ul> </li> </ul>
GTG	<ul style="list-style-type: none"> <li>• General: <ul style="list-style-type: none"> <li>▪ focus on: • Competencies, composition, and functioning of the Conference of the Parties; • Competencies, composition, and functioning of the Secretariat; • Necessity and design of intergovernmental dispute resolution; • Necessity and design of capacity building. Move the substantive elements (incl. commitments) into the optional protocols.</li> <li>○ Workstream I should not be used as a ‘framework protocol approach’ which contains commitments that are and should be in the focus of the two (or more) protocols. These two protocols are optional for countries, and</li> </ul> </li> </ul>

	<p>therefore, by having this protocol approach, Workstream I should focus on achieving an effective, inclusive international tax cooperation framework, i.e. an umbrella so that countries can agree on further obligations through protocols.</p> <ul style="list-style-type: none"> <li>○ The FC should be limited to the lowest common denominator among the largest possible number of countries. Only this would enable an effective development of the international tax regime in the decades to come. If overly progressive commitments are included, it is unlikely that a large majority of states will sign the framework</li> <li>○ Since the beginning of the project, it has been known that separating objectives, principles, and commitments is not necessary and risks creating confusion.</li> <li>○ The essential provisions of a framework convention are those that regulate cooperation. The mode of cooperation should first be discussed, and only subsequently the question of whether and which commitments should be part of the FC or not.</li> <li>○ It may even be preferable to have no commitments at all: by focusing on these commitments we may engage in discussions that will deviate the attention to what is really important, i.e. the governance of the Framework Convention and the institutionalization of capacity building.</li> </ul>
ICC	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ it remains unclear when and how the principles will be addressed and captured in the drafting process. There is a need to first establish the fundamental principles, for example, on the basis of which taxing rights are to be allocated, before attempting to construct detailed allocation infrastructure.</li> <li>○ underscore that the role of taxpayers must be clearly recognized and actively embedded in the design and functioning of these mechanisms. Dispute resolution processes that fail to adequately involve taxpayers risk losing legitimacy and effectiveness.</li> <li>○ need for active taxpayer participation in dispute prevention and resolution mechanisms;</li> </ul> </li> </ul>
ICRICT	<ul style="list-style-type: none"> <li>● 1) The focus should be on dispute prevention rather than resolution. Instead of focusing on a binding dispute resolution, the emphasis should be on efforts to resolve the underlying problems behind tax dispute prevention and resolution. Propose the use of mandatory arbitration.</li> </ul>
ITUC & PSI	<ul style="list-style-type: none"> <li>● commitment to prevention and resolution of tax disputes must be done exclusively in relation to sovereign, state-to-state dispute</li> </ul>

	<p>resolution. Against investor-state dispute settlement, which creates parallel legal systems favouring multinational enterprises over democratic decision-making. Disputes must be resolved transparently, fairly, and solely between states.</p>
KPMG	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ in ‘exhausting every effort’ to obtain consensus, working advisory groups be established that could assist in the deliberations of the Intergovernmental Negotiating Committee (INC).</li> <li>○ the work of the INC be supported by strong evidence including economic analysis. This approach needs to be explicitly adopted in the FC.</li> <li>○ Optionality may help support the drive for consensus in some circumstances.</li> </ul> </li> </ul>
SC	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ prioritize paragraph 13. Of prime importance is the composition, powers and functions of the Conference of Parties and its mode of decision-making.</li> <li>○ commitments must remain high-level and avoid going into too much detail. Details should be rather fleshed out in the protocols, which is the appropriate place.</li> <li>○ the central problem of international tax cooperation is bad governance, through the opaque, undemocratic, non-inclusive and unaccountable OECD-led regime which has no statutory basis or rules of procedure and therefore functions in a totally arbitrary manner.</li> <li>○ the FC can solve the essential problem of governance by providing a statutory basis for international tax cooperation that is based on the principles contained in para 9 of the ToR.</li> <li>○ commitments can remain high level and do not need to go into too much detail. The UN Framework Convention is meant to be universal and therefore requires broad-based appeal.</li> </ul> </li> </ul>
TJN	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ align ourselves with the joint submission made by the Global Alliance for Tax Justice.</li> <li>○ need to discuss procedural provisions, particularly institutional mechanisms and the relationship with existing instruments, following an initial focus on commitments.</li> <li>○ relationship with Existing instruments: The Draft Issue Note does not explicitly address how the FCITC will interact with existing international tax instruments, such as the OECD/G20 Inclusive Framework or bilateral tax treaties.</li> <li>○ the success of the Convention depends on its institutional architecture and the availability of information to support informed decision-making.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ prioritise the commitment on transparency.</li> <li>● 1a) Prevention should be prioritized over resolution to reduce the burden on states. A commitment to adopt unitary taxation would inherently reduce disputes by simplifying the allocation of taxing rights.</li> </ul>
TJNA	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ paragraph 14 of the Terms of Reference provides that protocols are optional: if a protocol is so critical that it requires simultaneous negotiation, then within the practice of public international law, it is odd that it would still be optional. Considering that the first protocol is likely optional, a strengthened FC that provides watertight provisions, while allowing for enough flexibility for future use, is critical.</li> <li>● 1a) inclusion of an additional element, namely, transparency. Within investor-state dispute resolution processes, the lack of transparency in these processes has been so opaque to the extent that, other than the parties, it is near impossible to be aware of a dispute being initiated. This lack of transparency is likely to be duplicated within international tax disputes, especially if mandatory arbitration is resorted to in accordance with instruments such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. <ul style="list-style-type: none"> <li>○ paragraph 13 of the Terms of Reference. We urge members of the workstream, to take into consideration not only tax disputes that may arise between taxpayers and tax administrations but also tax disputes that may arise between tax administrations due to differences in the interpretation of the Framework Convention itself.</li> </ul> </li> </ul> </li> </ul>
UK NGOs	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ reference and endorse submissions from the GATJ and ICRICT; The text of the Convention can be concise and clear, leaving necessary detail to be agreed through COPs.</li> </ul> </li> </ul>
WATAF	<ul style="list-style-type: none"> <li>● 1) Need for clearly stipulated procedural provisions for speedy resolution</li> </ul>
YTJN	<ul style="list-style-type: none"> <li>● General: <ul style="list-style-type: none"> <li>○ the Convention must embed "future generations" in its objectives, ensuring tax policies do not exacerbate youth debt burdens or underfund essential services.</li> <li>○ the convention must institutionalize meaningful youth participation in tax policy dialogues and decision-making, recognizing youth as key stakeholders in shaping fair tax systems that affect their futures.</li> </ul> </li> </ul>

## 1.2 (10(f)) Draft Commitment on Fair allocation of taxing rights, including equitable taxation of multinational enterprises

“The commitment should urge parties to agree on an approach to the allocation of taxing rights that recognizes that every jurisdiction where business activity takes place should share in taxing rights over the income generated from such business activities, while recognizing the value of economic efficiency and tax neutrality, simplicity and administrability and the importance of effects on cross-border trade and investment. There might also need to be some explanation of how to determine where business activity takes place in light of digitalization and other new business models.” [Issues Notes, para 14]

**a) Do elements included in paragraph 14 provide a useful outline of a commitment on this topic?**

**b) Are there additional concerns regarding the fair allocation of taxing rights to be addressed in that article of the FC?**

AG	<ul style="list-style-type: none"><li>• 2a) No need to define fairness and other terms. The meaning of terms used will be shaped by the content and context of any given substantive tax rules elaborated in the early or future protocols.</li><li>• 2b) Ref to paragraph 7(c)ToR</li></ul>
BEL	<ul style="list-style-type: none"><li>• 2a) only after further discussions based on the underlying economic principles and further thorough economic analysis, an approach might be agreed;</li><li>• 2b) a distinction should be made between the allocation of taxing rights and the taxation of (multinational) enterprises. Allocation concerns the relationship between the member states while the taxation concerns the relationship between the member states on one side and the (multinational) enterprises on the other side.</li><li>• WS II should be able to advance its work on cross-border services in a digitalized and globalized economy independently of any specific commitments outlined under Workstream I.</li></ul>
BRA	<ul style="list-style-type: none"><li>• 2a) DRM must also pay particular attention to capacity building and to ensuring effective taxation of high-net worth individuals.</li><li>• 2b) Other background or structural conditions of developing countries that have to be taken into consideration while interpreting or applying the principles of para 14: tax mix, administrability and enforcement, balanced negotiations, Chronic fiscal constraints linked to external debt, capital flight, and low DRM capacity, Asymmetries in international capital markets, virtual presence.</li></ul>
COL	2b) highlight innovative solutions such as the Significant Economic Presence (SEP) approach, applicable to both the provision of services and the sale of goods with no physical presence in a market jurisdiction.

CZE	<ul style="list-style-type: none"> <li>• 2a) General language that promotes equity, efficiency, and minimal administrative burden, while avoiding overlap with other workstreams;           <ul style="list-style-type: none"> <li>○ While this commitment should be looked at in connection with WS II, Protocol I, however, the scope of the commitment is not exactly the same as the one of the Protocol I, as the former is broader, while the latter is limited to services.</li> </ul> </li> <li>• 2b) this commitment should be written in a general way, and should emphasize that it should also promote equity, economic efficiency, ease of administration and compliance, and should discourage tax avoidance; should not increase the administrative burden either for the tax administrators or taxpayers and should consider the effects on cross-border trade and investment.           <ul style="list-style-type: none"> <li>○ the Framework Convention should not contain any provision discussing how to determine where business activity takes place. Workstream II seems more appropriate for this discussion.</li> </ul> </li> </ul>
FRA	<ul style="list-style-type: none"> <li>• [input restricted to services, link to WS II]: Given that tax treaties are in essence a sovereign issue, a unilateral, radical and untargeted change in the allocation of taxing rights, specifically on cross border services, would be highly inappropriate and ineffective. In particular, France has strong reservations with regard to the generalization of gross-basis taxation and the creation of a new nexus.</li> </ul>
DEU	<ul style="list-style-type: none"> <li>• Support</li> </ul>
GHA	<ul style="list-style-type: none"> <li>• 2a) (= AG) We do not support any effort to limit the concept of “fairness” or any other term to a fixed menu within the commitment section of the Convention. The meaning of terms used thereof should be shaped by the content and context of any given substantive tax rules when elaborated in the early or future protocols.</li> <li>• 2b) The rendition in paragraph 7(c) of the ToR fully addresses this issue.</li> </ul>
IDN	<ul style="list-style-type: none"> <li>• 2a) the commitment would be strengthened by more explicitly reaffirming the importance of source taxation—particularly for developing countries that host real economic activity and user markets but often do not receive a fair share of taxing rights under current rules.</li> <li>• 2b) Explicit Recognition of Source-Based Taxation (fairness entails the right of countries to tax income derived from economic activities occurring within their jurisdiction, including significant economic presence (user participation, and market engagement) even in the absence of physical presence.). Real Economic Contribution as a Basis for Taxing Rights.</li> </ul>

IRL	<ul style="list-style-type: none"> <li>Many jurisdictions believe that the discussion on this topic requires consideration of many broader issues beyond simply the balance of taxing rights between the country of supply and demand.</li> <li>A definition of “fair” will be extremely difficult to arrive at.</li> </ul>
ITA	<ul style="list-style-type: none"> <li>Leave to the protocol any allocation aspects, also for digitalized businesses.</li> </ul>
MAR	<ul style="list-style-type: none"> <li>The FC must shift this imbalance by recognizing the rights of source countries, where users, consumers, and resources are located to effectively tax the economic activity within its market. This requires a clear political commitment at the Convention level, while technical rules can be elaborated in the relevant protocols.</li> <li>The term “fair allocation of taxing rights” should remain sufficiently flexible to accommodate the continuous evolution of business models.</li> </ul>
NLD	<ul style="list-style-type: none"> <li>Do not use the word “eroded” in para 12.</li> <li>Replace “might” with “will”.</li> </ul>
NGA	<ul style="list-style-type: none"> <li>2a) Elements included in paragraph 14 do not provide a useful outline of a commitment on fair allocation of taxing rights. They are more suited to providing a roadmap in the protocol on issues to consider while negotiating agreeable terms on the subject. The commitment on this subject should be worded in broad and general terms to avoid restricting the freedom of parties to negotiate an efficient protocol.</li> <li>2b) the framework convention provides a general commitment on the subject while the protocol from WS II and any other relevant protocol originating from that commitment can provide further details on how to achieve fair allocation of taxing rights.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>2a) the practical implications of the commitment remain unclear, particularly given that fair allocation of taxing rights presumes willingness among jurisdictions to share or limit taxing rights under domestic law. Furthermore, tax sovereignty is a fundamental element that should be reflected when developing the commitment on the fair allocation of taxing rights.</li> <li>2b) the commitment should also emphasise the need for economic analysis of the impact of any measures considered to operationalise it. Further, the commitment should acknowledge the flexibility of Member States to fulfil it.</li> </ul>
KOR	<ul style="list-style-type: none"> <li>General: cautions against attempts to prescribe rigid rules for future business models, noting the difficulty of forecasting technological and structural changes. <ul style="list-style-type: none"> <li>Language used in describing the existing system and in drafting commitments should be balanced and diplomatic, to encourage broad participation and respect for sovereignty.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ The current framework is described by some as “unfair” in paragraph 13, but we recommend a more neutral and constructive tone.</li> <li>● 2a) need for greater conceptual clarity regarding “value creation,” which is referenced as a potential basis for allocating taxing rights.</li> </ul>
RUS	<ul style="list-style-type: none"> <li>● 2a) The elements included in paragraph 14 do not fully provide a useful outline of a commitment on this topic. <ul style="list-style-type: none"> <li>○ Determine and clarify where business activities takes place.</li> <li>○ Include a reference to the restrictive effect of DTCs on source countries.</li> <li>○ Include the issue of tax collection mechanisms.</li> </ul> </li> </ul>
STP	<ul style="list-style-type: none"> <li>● 2a) The concept of 'significant digital presence' should be recognized as a legitimate basis for taxation. This measure is crucial to protect the tax base of developing countries and ensure a fairer distribution of global tax revenue.</li> </ul>
SAU	<ul style="list-style-type: none"> <li>● 2b) The commitment should explicitly define the interaction with Protocol I.</li> </ul>
SEN	<ul style="list-style-type: none"> <li>● 2a) It seems premature to commit to defining an approach regarding the allocation of taxing rights, even if linking taxation to the market jurisdiction where value is created should be a basic principle of negotiation.</li> <li>● 2b) the wording of article 7(c) referenced above in the Terms of Reference should be sufficient.</li> </ul>
SGP	<ul style="list-style-type: none"> <li>● 2a) It is important to clarify how the commitment in the FC would interact with existing and future tax treaties, which have been or will be bilaterally negotiated and mutually agreed, and are legally binding on the Contracting Parties. <ul style="list-style-type: none"> <li>○ It would still be useful to include a clause in the FC to make it clear that the terms of separately negotiated tax treaties should prevail.</li> <li>○ There are different views on what constitutes “fair allocation of taxing rights”. This is because the concept of fairness is inherently subjective and differs from Member State to Member State.</li> <li>○ However, the use of “business activity” as a standalone basis of allocating taxing rights as referenced in the Issues Note is a new concept that has not been discussed, and hence it is unclear what kind of “business activity” should result in taxing rights, as well as how MSs should determine where such business activity takes place.</li> <li>○ Value creation by the suppliers of goods and services should remain as the fundamental principle underpinning the allocation of taxing rights, as these suppliers undertake the substantive economic activities giving rise to the income.</li> </ul> </li> </ul>

ESP	<ul style="list-style-type: none"> <li>• Don't share the demand for this commitment. Don't agree that this conclusion was reached during the meetings.</li> </ul>
SWE	<ul style="list-style-type: none"> <li>• 2a) Disagreement among MSs on the perception of fairness of the existing system.</li> <li>• 2b) More discussion and further analysis is needed to determine what aspects of the current system needs to be fixed to adapt the system to new business models.</li> </ul>
CHE	<ul style="list-style-type: none"> <li>• 2a) To make such a commitment enforceable, the note should call for the development of a common understanding of fairness.</li> <li>• 2b) Importance of the question of where relevant business activities take place for the application of this concept.</li> </ul>
TUN	2a) nécessité de reconnaître le droit des juridictions de marché à exercer leur souveraineté fiscale sur les bénéfices générés sur leur territoire quelle soit la modalité de prestation de services.
Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>• 2a) No. We urge the workstream not to go into explanation of how to determine where business activity takes place or into any form of definition in the context of the commitments, including on fair allocation of taxing rights. We further urge the workstream to stick to what has been stated in the ToR or to be as close to what was stated as possible.</li> <li>• 2b) While not advisable, any specific mention of items under this commitment must show that those items mentioned are only indicative and not conclusive; it must also include measures that guarantees right to tax for source jurisdictions.</li> </ul>
AU	<ul style="list-style-type: none"> <li>• 2a) Urge the workstream not to go into explanation of how to determine where business activity takes place or into any form of definition in the context of the commitments including on fair allocation of taxing rights. We further urge the workstream to stick to what has been stated in the ToR or to be as close to what was stated as possible.</li> <li>• 2b) It must also include rebalancing of taxing right under the digital economy, allocation of taxing rights based on real economic activity, including user participation and value creation in market jurisdictions and other measures that guarantees right to tax for source jurisdictions.</li> </ul>
BCRE	<ul style="list-style-type: none"> <li>• 2) the FC should include a commitment to replace the failed transfer pricing system by developing and implementing a new international corporate tax system that taxes MNCs as coherent entities, on the basis of their global profit (also known as unitary taxation with formulary apportionment), supplemented by the introduction of an ambitious minimum effective corporate tax rate.</li> </ul>
ETFE	<ul style="list-style-type: none"> <li>• 2a) Support.</li> </ul>

	<ul style="list-style-type: none"> <li>• 2b) Fair allocation of taxing rights entails a reform of the principles governing international taxation, i.e. the arm's length principle, and the pre-eminence of residence over source taxation in tax treaties.</li> <li>• Elaborate a definition of "where activity takes place" is anchored to real activity, i.e. to a principle of economic reality, instead of a contractual allocation of such activity.</li> </ul>
FTG	<ul style="list-style-type: none"> <li>• Include a commitment to replace the failed TP system by developing and implementing a new international corporate tax system that taxes MNEs as coherent entities, on the basis of their global profit (also known as unitary taxation or formulary apportionment), and financial transparency provisions.</li> </ul>
GATJ	<ul style="list-style-type: none"> <li>• 2a) the Convention should include a commitment to replace the failed transfer pricing system by developing and implementing a new international corporate tax system that taxes MNCs as coherent entities, on the basis of their global profit (also known as unitary taxation with formulary apportionment), supplemented by the introduction of an ambitious minimum effective corporate tax rate.</li> </ul>
GP	<ul style="list-style-type: none"> <li>• The Convention must adopt the principle of common but differentiated responsibilities and respective capabilities (CBDR).</li> <li>• 2) Should include a commitment to replace the failed transfer pricing system by developing and implementing a new international corporate tax system that taxes MNCs as coherent entities, on the basis of their global profit.</li> </ul>
GTG	<ul style="list-style-type: none"> <li>• 2a) states have been striving for decades to achieve a fair allocation — which is ultimately impossible, as there is no objectively 'fair' allocation. Fairness is mainly achieved through fair terms of cooperation (input legitimacy). Therefore, the focus should be on fair terms of cooperation.</li> </ul>
ICRICT	<ul style="list-style-type: none"> <li>• 2) fair allocation of taxing rights can only be achieved by moving away from the current dysfunctional transfer pricing system towards unitary taxation, to allow the allocation of taxing rights over the profits of multinationals in a balanced way (through formulary/fractional apportionment) using factors reflecting both supply (e.g., assets, employees, resources used) and demand (sales). Neither can create value without the other.</li> <li>• The Convention should therefore include: <ul style="list-style-type: none"> <li>○ a commitment to ensure equitable taxation of multinational enterprises so that their profits are allocated to all jurisdictions where real business activity takes place.</li> <li>○ a commitment to move away from the current transfer pricing system towards unitary taxation based on formulary/fractional apportionment.</li> </ul> </li> </ul>
ICC	<ul style="list-style-type: none"> <li>• 2) cautions against a broad, undefined debate on "fairness" due to its subjectivity and potential to delay progress</li> </ul>

ITUC & PSI	<ul style="list-style-type: none"> <li>• 2) Move beyond the harmful residence vs. source jurisdiction model and commit to a value-creation approach based on employment, sales, and assets.           <ul style="list-style-type: none"> <li>○ The concept of “business activity” must be further clarified in order for the Convention to provide a meaningful foundation.</li> </ul> </li> </ul>
SC	<ul style="list-style-type: none"> <li>• 2a) The term “level playing field” could replace the term “tax neutrality” which has multiple meanings.           <ul style="list-style-type: none"> <li>○ Para 14 also suggests the need to explain how to determine where business activity takes place. This is an unnecessary detail which can become a very complex exercise, may not have universal applicability to all business activities, can become quickly outdated in the face of evolving business models and will end up wasting precious negotiating time. The explanation on how to determine where business activity takes place can be deleted from the commitment and this can be better dealt with on an issue-specific basis in the relevant protocols.</li> </ul> </li> <li>• 2b) while not advisable, any specific mention of items under this commitment must show that those items mentioned are only indicative and not exhaustive; it must also include rebalancing of taxing rights under the digital economy, allocation of taxing rights based on real economic activity, including user participation and value creation in market jurisdictions and other measures that guarantee right to tax for source jurisdictions.</li> </ul>
TJN	<ul style="list-style-type: none"> <li>• The current transfer pricing system, based on the arm’s length principle, is fundamentally flawed. recommend that the Convention include a commitment to replace the transfer pricing system with a unitary taxation system based on formulary apportionment.</li> </ul>
TJNA	<ul style="list-style-type: none"> <li>• 2a) In addition to the elements outlined, we propose an additional element, namely, <i>inter-nation equity</i>.</li> <li>• The end of Paragraph 14 notes that “There might also need to be some explanation of how to determine where business activity takes place in light of digitalization and other new business models.” This is a crucial question that needs to be given far greater attention.</li> <li>• Needs to include the question of unitary taxation of multinational enterprises as a replacement for the transfer pricing system.</li> <li>• Note that two commitments considered within the issues note are closely related to early protocols which are optional in nature and strongly encourage negotiators to include watertight provisions in this regard that can stand alone irrespective of the protocols.</li> </ul>
UK NGOs	<ul style="list-style-type: none"> <li>• 2) The combination of transfer pricing and the preference of residence over source taxation in double tax treaties provides the</li> </ul>

	<p>foundation for an embedded global system of tax avoidance and a global tax regime which is complex, inefficient, and unfair.</p> <ul style="list-style-type: none"> <li>The Convention should be predicated on a commitment to agree a new way of taxing multinational enterprises which recognizes the reality of multinational enterprises operating in a ‘unitary’ manner and taxes them accordingly. Unitary Taxation approach to multinationals, with formulary apportionment of profits.</li> <li>The precise formula could be specified in Workstream II.</li> </ul>
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### 1.3 (10(c)) Draft Commitment on Sustainable Development

“Taking into account their different capacities, the States Parties agree to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner.” [Issues Notes, para 17]

***Are there additional aspects of international tax cooperation approaches that contribute to sustainable development that should be addressed in additional paragraphs of that article of the FC?***

AG	<ul style="list-style-type: none"> <li>3) No.</li> </ul>
BEL	<ul style="list-style-type: none"> <li>3) noting that paragraph 10(c) ToR has not been designated as a priority area, we caution against overburdening the process. Belgium therefore supports the current wording of paragraph 10(c) ToR and sees no need for amendment at this stage but remains open to discuss.</li> </ul>
BRA	<ul style="list-style-type: none"> <li>3) The article should move beyond declaratory language by incorporating operational and normative principles.</li> </ul>
COL	<ul style="list-style-type: none"> <li>3) it is crucial to recognize the different capacities, allowing implementation to align with the realities and needs of each jurisdiction. This commitment must ensure a fair distribution of efforts and resources, so that each country contributes according to its capabilities and circumstances.</li> </ul>
CZE	<ul style="list-style-type: none"> <li>3) The current commitment’s description is insufficient to properly understand the scope of this commitment in the Framework Convention and needs further elaboration and discussion to clarify its scope within the Framework Convention.</li> <li>The text of the commitment in the language of the ToR, is not specific enough from our perspective.</li> </ul>
FRA	<ul style="list-style-type: none"> <li>3) Full support.</li> </ul>
DEU	<ul style="list-style-type: none"> <li>3) Support.</li> </ul>
GHA	<ul style="list-style-type: none"> <li>3) The proposal is broad enough to provide a basis for future protocols when the need arises .</li> </ul>
IDN	<ul style="list-style-type: none"> <li>3) Support.</li> </ul>

ITA	<ul style="list-style-type: none"> <li>• 3) For the time being the commitment on sustainable development in the FC should be drafted high-level.</li> </ul>
MAR	<ul style="list-style-type: none"> <li>• 3) Support.</li> </ul>
NGA	<ul style="list-style-type: none"> <li>• 3) Support</li> </ul>
NOR	<ul style="list-style-type: none"> <li>• 3) The INC should gain more understanding of the implications of such a commitment in pursuing international tax cooperation, including how such commitments have been reflected in other UN Conventions.</li> </ul>
KOR	<ul style="list-style-type: none"> <li>• 3) more clarity is needed.</li> </ul>
RUS	<ul style="list-style-type: none"> <li>• 3) digitalization and investments in information technology systems contribute to sustainable development and should be included as an approach in international tax cooperation under FC.</li> </ul>
STP	<ul style="list-style-type: none"> <li>• 3) inclusion of a clear commitment to strengthening the institutional and technical capacities of tax administrations in developing countries that ensures coherence with the principles of the 2030 Agenda and reinforces the link between tax justice and financing for sustainable development.</li> </ul>
SAU	<ul style="list-style-type: none"> <li>• 3) Align this commitment with what is stated in the ToR.</li> </ul>
SEN	<ul style="list-style-type: none"> <li>• 3) Support.</li> </ul>
SGP	<ul style="list-style-type: none"> <li>• 3) The commitment should align more closely with the language adopted in the ToR.</li> </ul>
ESP	<ul style="list-style-type: none"> <li>• 3) We do not agree with the inclusion of this commitment in the Issues note as it needs further discussion.</li> </ul>
TUN	<ul style="list-style-type: none"> <li>• 3) Support.</li> </ul>
Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>• 3) No.</li> </ul>
AU	<ul style="list-style-type: none"> <li>• 3) Support but reinforce the Compromiso de Sevilla.</li> </ul>
BCRE	<ul style="list-style-type: none"> <li>• 3) Integrate with the Compromiso de Sevilla. Public social and educational systems must be sustainably financed through participatory budgeting, progressive taxation, increased aid, debt moratoriums, and the rejection of austerity policies that impact social sectors.</li> </ul>
CESR	<ul style="list-style-type: none"> <li>• 3) Sustainable development: include references to the principles of common but differentiated responsibilities and polluters pay. <ul style="list-style-type: none"> <li>○ <i>Additional Commitments:</i></li> <li>○ <i>“commitment to pursue gender equality via tax cooperation”;</i></li> <li>○ <i>Fairness: note that some human rights treaty bodies have already used the term “fair” in their monitoring work of member states’ policies, providing interpretative guidance on the scope of fair taxation.</i></li> <li>○ <i>The ToRs could be expanded to clarify: 1) the scope of “international human rights law”, making and explicit</i></li> </ul> </li> </ul>

	<i>reference to law “as laid down” in core United Nations human rights treaties.</i>
ETFE	<ul style="list-style-type: none"> <li>3) Pursuing international tax cooperation approaches that will contribute to the achievement of sustainable development also entails jurisdictions revising the way in which their contributing to damaging the possibilities of other Member’s States capacities to generate resources for economic, social and economic development.</li> </ul>
FTG	<ul style="list-style-type: none"> <li>3) importance of incorporating the principles related to common but differentiated responsibilities and respective capabilities (CBDR) as well as special and differential treatment of developing countries into the commitments of the Convention. The <i>Compromiso de Sevilla</i> also emphasises the necessity of aligning fiscal systems with environment, climate, and biodiversity commitments.</li> </ul>
F & F	<ul style="list-style-type: none"> <li>3) Despite environmental damages, taxation of industries involved in forest degradation, deforestation and land use change frequently fails to generate adequate public revenues. This shortfall is worsened by tax incentives, weak fiscal policies, and a global tax framework—including loopholes in transfer pricing rules—that enable aggressive tax evasion and avoidance by multinational corporations.</li> <li>The current tax system largely fails to internalize the environmental and social costs caused by forest exploitation and degradation, and places a higher tax burden on small to medium enterprises.</li> <li>Imposing progressive environmental taxes on the capital and assets of those sectors profiteering from deforestation, forest degradation and land use change, sets incentives for more sustainable business practices, thus decreasing environmental and social costs of large-scale forest loss.</li> </ul>
GATJ	<ul style="list-style-type: none"> <li>3) Aline with the <i>Compromiso de Sevilla</i>.</li> <li>the Convention should include a commitment to ensure that fiscal systems are fully in line with the progressive realization of human rights, inequality reduction and sustainable development, including the achievement of relevant UN goals, obligations and commitments.</li> <li>add a sub-commitment on progressive environmental taxation, in line with the polluter pays principle, under the overall commitment on tax and sustainable development.</li> </ul>
GP	<ul style="list-style-type: none"> <li>3) The Convention should aim to build a tax system that mobilizes public resources for climate and social investment, addresses ecological debt, and holds the wealthiest accountable for environmental harm.</li> <li>Compromiso de Sevilla.</li> </ul>

	<ul style="list-style-type: none"> <li>The Convention has a key role to play in promoting tax cooperation on environmental challenges as a key contribution to operationalizing the polluter pays principle, and to tackling the global environmental crises of our time</li> </ul>
GRA	<ul style="list-style-type: none"> <li>General:</li> <li>The third of the three commitments should be prioritized because it is closely related to issues that have been addressed by other substantive forums of the United Nations that expressly call for collective action from a fiscal perspective.</li> <li>Building on the foundations laid by the Pact for the Future and the recently adopted Seville Commitment, the achievement of sustainable development requires a renewed focus on international tax cooperation. While paragraph 16 recognizes that the wording of the terms of reference refers to a well-understood concept, given its breadth<sup>1</sup>, ways should be sought to specify the extent to which each of its dimensions can be supported. <ul style="list-style-type: none"> <li>From an economic perspective, the place of tax cooperation within public finance should be taken into account, combining efforts on the revenue side with those on the expenditure side. Also collaborate with organizations that have traditionally operated in the financial field and have gradually developed a structured understanding of the relationship between their work and sustainability issues.</li> <li>On the social side, in addition to respect for human rights, consideration should be given to the call from the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTSSE) for an ecosystem that provides tax incentives for the many micro, small, and medium-sized enterprises that make significant contributions to sustainability around the world (especially in developing countries).</li> <li>Environment: consideration should be given to the work of the UN</li> </ul> </li> <li>Subcommittee on Environmental Taxation. <ul style="list-style-type: none"> <li>States Parties to the Framework Convention should take as their starting point the specific elements on which the international community has already reached agreement through the adoption of specific international resolutions and incorporate them into the Convention. Otherwise, vagueness and excessive breadth may discourage them from making commitments.</li> </ul> </li> </ul>
GTG	<ul style="list-style-type: none"> <li>3) It is unclear how a commitment to individual or all SDGs (or similar goals) would produce a positive effect in the tax area.</li> </ul>
ICRICT	<ul style="list-style-type: none"> <li>3) Compromiso de Sevilla.</li> <li>The Convention should include a commitment to ensure that fiscal systems are fully in line with the progressive fulfilment of</li> </ul>

	human rights and sustainable development, including the achievement of relevant UN goals, obligations and commitments.
IUTC & PSI	<ul style="list-style-type: none"> <li>• 3) Integrate a reference to transparency.</li> </ul>
OECD (CTPA)	<ul style="list-style-type: none"> <li>• 3) Successfully mobilising domestic resources requires a multi-pronged approach</li> </ul>
REDFIS	<ul style="list-style-type: none"> <li>• 3) This commitment is not aspirational: it reflects existing legal obligations that States have undertaken through the Paris Agreement, international human rights instruments, and the 2030 Agenda for <ul style="list-style-type: none"> <li>○ Sustainable Development.</li> <li>○ Paris Agreement Articles 2.1(c), 9, 6.8,</li> <li>○ ICESCR, article 2(1). In the climate context, these extraterritorial obligations require that States with greater economic and historical responsibility contribute to the redistribution of resources through cross-border finance<sup>1</sup>.</li> <li>○ SDGs: The 2030 Agenda recognizes that achieving the SDGs will require States to mobilize resources domestically and through international cooperation. Fiscal policy is a core tool for this.</li> <li>○ Human rights norms provide critical guidance on how to align tax cooperation with sustainability and justice, and should therefore be explicitly included under the commitments treated by Workstream I.</li> </ul> </li> </ul>
TJN	<ul style="list-style-type: none"> <li>• 3) support the inclusion of a more ambitious commitment to align international tax rules and domestic tax systems with sustainable development goals, including reducing inequality, promoting gender equality, and protecting the environment. This commitment should draw on the Compromiso de Sevilla.</li> </ul>
UK NGOs	<ul style="list-style-type: none"> <li>• 3) Align with the Compromiso de Sevilla.</li> <li>• The Convention should include a commitment to ensure fiscal systems are aligned with the progressive fulfilment of human rights and sustainable development, articulating relevant UN goals, obligations and commitments.</li> <li>• The Convention should include operationalizing the polluter pays principle and tackling the global environmental crises of our time. add a component on</li> <li>• Progressive environmental taxation as a sub-commitment under the overall commitment on tax and sustainable development. However, commitments should be guided by the “principle of common but differentiated responsibilities and respective capabilities (CBDR_RC)” and the “principle of special and differentiated treatment of ‘developing countries’”.</li> </ul>

# Annex WS II

## 2 WS II: (Early) Protocol I on Taxation of Services

2.1 Issue (a): Whether Section III(a) comprehensively describes current rules for the taxation of services and the reasons behind the call for change, or whether there are additional considerations that should be taken into account in the workstream's discussions

2.1.1 Section III (a): Current rules for taxation of income from cross-border services and reasons for change

2.1.1.1 *Discrepancies between Domestic laws<sup>29</sup>*

2.1.1.1.1 Gross-basis withholding taxes on payments regardless of where services are performed

Issue Note	
	<ul style="list-style-type: none"><li>• Administrability and enforceability vs. gross taxation</li></ul>

MS Inputs	
AG	<ul style="list-style-type: none"><li>• The AG notes the caution in paragraph 16 of the Issues Note on the effect of gross taxes on services with a low profit margin and believes that withholding taxes can be set at a rate that will avoid over-taxation of businesses by ensuring that the rate represents a proxy for taxation net basis, and does not erode the taxation right of the resident state and other jurisdictions that make valuable contributions to the income.</li></ul>
DEU	<ul style="list-style-type: none"><li>• Gives raise to complex demarcation issues between goods and services;</li></ul>
ITA	<ul style="list-style-type: none"><li>• WHT would need to be coordinated with anti-treaty shopping rules to ensure a level playing field.</li></ul>
NOR	<ul style="list-style-type: none"><li>• The findings of economic literature show that gross-based taxation implies huge economic distortions and welfare loss and thus cannot be consistent with the objective of a fair and balanced allocation of taxing rights.</li></ul>
RUS	<ul style="list-style-type: none"><li>• For non-intragroup services - reduced tax rates, and for intragroup services - higher tax rates</li></ul>

### Non-MS Inputs

<sup>29</sup> i.e. significant differences between the ways that income from cross-border services is taxed under the **domestic laws** of Member States.

<b>ATM</b>	<ul style="list-style-type: none"> <li>While the specific withholding rate may be left for negotiation, it is worth considering a ceiling rate in the Convention or protocol to prevent excessively high taxes on services/royalties. The tax on gross should approximate the tax on net income. The protocol should oblige residence states to grant double-tax relief—credit or exemption for income already taxed at source.</li> </ul>
<b>AU</b>	<ul style="list-style-type: none"> <li>Other options may be considered for certain digital services and business to consumer supplies where WHT may be less effective.</li> </ul>
<b>CFS UniN</b>	<ul style="list-style-type: none"> <li>Differential Rates: Recognition that service categories have varying profit margins justifies differential withholding rates. Minimum Rate Floors: To prevent treaty shopping, the protocol must establish minimum withholding rates below which contracting states cannot reduce rates even through bilateral treaties. Residence countries should provide tax credits for source country withholding taxes, with coordination procedures ensuring appropriate relief levels.</li> </ul>
<b>ETFE</b>	<ul style="list-style-type: none"> <li>Clarify the interaction between the ALP, domestic deductibility rules (role of Art. 24 MC) and WHT.</li> </ul>
<b>G-24</b>	<ul style="list-style-type: none"> <li>The OECD now requires developing countries seeking membership (e.g., Colombia, Brazil) to enter into treaties without such clauses.</li> </ul>
<b>IBFD</b>	<ul style="list-style-type: none"> <li>Consider tired WHT rates based on the type of service and average industry profit margin.</li> </ul>
<b>ICC</b>	<ul style="list-style-type: none"> <li>Mind gross-up clauses, and the risk of double taxation. It is crucial that businesses are afforded certainty regarding the ability to credit such WHT against their corporate taxation burden. A WHT mechanism inherently represents an upfront cost for businesses, irrespective of whether actual profits related to the revenue taxed have been realized by the business.</li> <li>Given the broad range of margins that different industries and activities command (and will command in future as business practices and services continue to evolve), we note with particular concern the equity and distortive impacts of blunt instruments like gross basis withholding taxes – particularly when set at high and/or inflexible levels.</li> </ul>
<b>KPMG</b>	<ul style="list-style-type: none"> <li>Encourages the Committee to commission significant economic analysis of the potential impacts of withholding taxes on cross border services based on listed criteria.</li> </ul>
<b>NFTC</b>	<ul style="list-style-type: none"> <li>Consider the impact of such a rule on low value-added services.</li> <li>Substitute with the promotion of VATs.</li> </ul>

TJN	<ul style="list-style-type: none"> <li>For developing countries, the Protocol (MNE unitary taxation proposal) would only be an adequate substitute to WHT on gross if it delivered both in the ease of implementation and in a fairness in allocation.</li> </ul>
TUN	<ul style="list-style-type: none"> <li>La nécessité de clarifier la méthode de répartition envisagée, surtout dans le contexte de l'économie numérique.</li> <li>Le besoin de définir les notions fondamentales notamment les « services numériques » afin d'aboutir à un langage clair et universel.</li> </ul>

#### 2.1.1.1.2 Non-residents may register and file a tax return to pay tax on a net basis

Issues Note	
	<ul style="list-style-type: none"> <li>Taxation on net profits vs non-taxation of services performed remotely</li> </ul>

#### 2.1.1.1.3 Net-basis taxation where a non-resident is physically present while performing the services

Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>High costs for tax administration's assessments.</li> </ul>
AU	<ul style="list-style-type: none"> <li>The note underestimates the administrative burden of net-basis taxation.</li> </ul>
BMG	<ul style="list-style-type: none"> <li>Domestic rules for DTR may deny DTR when services are taxed at source in certain instances.</li> </ul>
CFS UniN	<ul style="list-style-type: none"> <li><i>Treaty Shopping and Investment Hub Exploitation</i> The current analysis in the note insufficiently addresses how sophisticated tax planning systematically undermines developing countries' domestic tax rules.</li> <li><i>Most-Favoured-Nation Proliferation Effects</i>: For example, when Nigeria agreed to eliminate withholding taxes on technical services in its treaty with the United Kingdom, MFN clauses in other treaties required extending this benefit to multiple additional countries, multiplying the revenue impact far beyond the original bilateral negotiation.</li> </ul>
RR	<ul style="list-style-type: none"> <li>“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.</li> </ul>

#### 2.1.1.2 Discrepancies between MCs<sup>30</sup>

##### ISSUES NOTE

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<sup>30</sup> i.e. because of these basic differences in Member States' domestic laws, tax treaty limitations on taxation of income from cross-border services affect countries described in paragraph 7 more than those described in paragraph 8.

- OECD MC 2017 (Art. 7 and fixed place PE) vs UN MC 2025 (Arts. 12AA, 12B, 12C)

<b>MS Inputs</b>	
<b>BEL</b>	<ul style="list-style-type: none"> <li>• Important role that existing treaties play in helping to stimulate innovation and economic growth which are essential for domestic revenue mobilisation in all jurisdictions.</li> <li>• With respect to the difficulties that developing countries face in modifying or terminating bilateral tax treaties, as referenced in paragraph 11, it would be valuable to provide a more detailed analysis of the underlying reasons for these difficulties and to explore potential solutions to address them.</li> </ul>
<b>NLD</b>	<ul style="list-style-type: none"> <li>• In § 11 we propose to change “they are prevented from imposing” to “they have agreed not to impose”.</li> </ul>

#### **NON-MS INPUTS**

<b>BMG</b>	<ul style="list-style-type: none"> <li>• Countries may apply DTCs DTR to deny DTR when services are taxed at source in certain instances.</li> </ul>
<b>SC</b>	<ul style="list-style-type: none"> <li>• Reference to findings by a study quantifying revenue losses for its Member States owing to treaty restrictions on taxing services.</li> </ul>

*2.1.1.3 Capacity building and technical assistance for TP assessment in case of non-AL arrangements.*

#### **ISSUES NOTE**

- NO INFORMATION AND COSTLY PROCESSES
- TP RULES ARE INHERENTLY UNFIT (TOO MUCH WEIGHT ON ACTIVITIES TYPICALLY TAKING PLACE IN THE STATE OF RESIDENCE AND NOT ENOUGH ON THE MARKET JURISDICTION)

<b>MS Inputs</b>	
<b>IRL</b>	<ul style="list-style-type: none"> <li>• TP rules are adequate. OECD and UN work on TP is improving the framework. Capacity building can serve to fill the gaps.</li> </ul>
<b>NGA</b>	<ul style="list-style-type: none"> <li>• Approaches that offer a simpler and more equitable alternative taxation of MNEs against the complex and frequently abused transfer pricing rules.</li> </ul>
<b>NOR</b>	<ul style="list-style-type: none"> <li>• The ALP has been a fundamental feature of the Norwegian tax system for over a century and remains key to protect our tax base against the increased risk of base erosion inherent in intra group transactions. It is also a fundamental feature of Norway’s tax treaties, and our experience is that the ALP works well overall.</li> </ul>

#### **NON-MS INPUTS**

<b>CFS UNIN</b>	<ul style="list-style-type: none"> <li>• New rules should explicitly permit formulary apportionment for service income, particularly in digital and intangible-intensive sectors. Formulary approaches based on sales, users, or market</li> </ul>
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	<p>presence provide more objective allocation mechanisms whilst reducing administrative burdens for both taxpayers and tax authorities.</p>
GATJ	<ul style="list-style-type: none"> <li>The Convention should include a commitment to replace the failed transfer pricing system by developing and implementing a new international corporate tax system that taxes MNCs as coherent entities, on the basis of their global profit (also known as unitary taxation with formulary apportionment), supplemented by the introduction of an ambitious minimum effective corporate tax rate.</li> </ul>
IBFD	<ul style="list-style-type: none"> <li>For remote services providers the Protocol could propose an alternative profit attribution method beyond the AOA.</li> </ul>
ICRICT	<ul style="list-style-type: none"> <li>A unitary approach should apportion the MNE's global income to the different jurisdictions based on objectively verifiable factors rather than resort to the fiction of arm's-length transactions or that one could possibly calculate what arm's-length prices might look like.</li> <li>The protocol should result in fair reallocation of taxing rights between countries, underpinned by the principle of unitary taxation and formulary apportionment or fractional apportionment of all profits of all multinationals across different jurisdictions.</li> </ul>
NFTC	<ul style="list-style-type: none"> <li>Take inspiration from Amount B and apply it to services</li> </ul>
TJN	<ul style="list-style-type: none"> <li>Countries might consider making the PCBCR reports of MNEs public and spontaneously sharing additional information that might assist their trading counterparts in developing country context.</li> </ul>
TJNA	<ul style="list-style-type: none"> <li>"As long as transfer pricing continues to perpetuate this emphasis on a functional analysis and based profit allocation on this and the fictional separation of entities under a group company, the issue of base erosion &amp; profits shifting is likely to persist. Companies will continue to be incentivised to manipulate their prices to minimise their liability. Additionally, it is recognised that there is a portion of profits that are not attributable to any functions of entities within the group MNE".</li> <li>Consider doing away with the current transfer pricing system and resorting instead to unitary taxation and formulary apportionment.</li> </ul>
WATAF	<ul style="list-style-type: none"> <li>State parties could include database development and exchange of information as parts of the infrastructure to build.</li> </ul>

#### 2.1.1.4 *Unsuitability of existing rules to reflect current ways of doing business*

Issues Note	
	<ul style="list-style-type: none"> <li>Remote provision of services</li> </ul>

## 2.2 Issue (b): What considerations are most important in developing possible new rules for the taxation of services

### 2.2.1 Developing new approaches to taxing income from services

#### 2.2.1.1 *What are the justifications for new nexus rules for services?*

##### ISSUES NOTE

	<ul style="list-style-type: none"><li>• SUPPORTING DOMESTIC RESOURCE MOBILIZATION BY PROVIDING FOR A FAIR ALLOCATION OF TAXING RIGHTS;</li><li>• ELIMINATE BARRIERS TO CROSS-BORDER TRADE AND INVESTMENT;</li><li>• ECONOMIC EFFICIENCY;</li><li>• TAX NEUTRALITY;</li><li>• SIMPLICITY AND ADMINISTRABILITY;</li><li>• FUTURE-PROOF (EVEN AS BUSINESS MODELS CHANGE IN WAYS THAT ARE IMPOSSIBLE TO NOW FORETELL)</li></ul>
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MS Inputs	
AG	<ul style="list-style-type: none"><li>• The considerations for taxation of services should reflect the General Assembly's recognition in Resolution 78/230 that all taxpayers should pay taxes to the Governments of countries where economic activity occurs, value is created and from where revenues are generated.</li><li>• The concept of "source state" should be considered to include all jurisdictions that make valuable contributions to an income. For example, the jurisdiction where the user data was sourced in the case of income from use or alienation of user data.</li></ul>

##### NON-MS INPUTS

BJA	<ul style="list-style-type: none"><li>• There are no convincing tax policy reasons to prefer one (nexus) rule over the other. This is essentially a political decision.</li></ul>
G-24	<ul style="list-style-type: none"><li>• SEP: The use of location-specific allocation factors (physical assets, employees, sales) would facilitate administration and hinder avoidance, while ensuring that tax is paid where activities take place and value is created.</li></ul>
TWN	<ul style="list-style-type: none"><li>• A corollary of the sovereign right to tax is that countries can establish the criteria for determining the source of income that is paid from their residents to non-residents.</li></ul>
YX	<ul style="list-style-type: none"><li>• Objective factors, particularly those related to global trade in services, should be considered.</li><li>• Less developed jurisdictions have not fully benefited from the growth in international trade in services. To support these jurisdictions' economic development and revenue mobilization, greater recognition needs to be given to domestic consumers, users, and access to local markets – factors that would justify increased source-state taxation.</li></ul>

- International data on imports and exports of services, available from relevant organizations, could inform the design or negotiation of new rules.

### 2.2.1.2 New nexus?

#### 2.2.1.2.1 Deductibility of payment because it is a cost for the jurisdiction

<b>GBR</b>	<ul style="list-style-type: none"> <li>• Gross taxation based on deduction is not a justified nexus.</li> </ul>
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#### 2.2.1.2.2 Benefit from access to the market and users contribution to the generation of income

Non-MS Inputs	
TJNA	<ul style="list-style-type: none"> <li>• It should be recognised that ultimately increased taxing rights to market jurisdictions will definitely benefit bigger markets, which are often found in Global North Countries.</li> </ul>

#### 2.2.1.2.3 Physical presence

#### 2.2.1.2.4 Different nexus depending on the type of services/and between services and goods (physically, remotely and digitally)

Issues Notes Point	
	<ul style="list-style-type: none"> <li>• Violation of neutrality, especially if services may be provided in many different ways</li> </ul>

MS Inputs	
FRA	<ul style="list-style-type: none"> <li>• Recalling the heterogeneous nature of cross-border services, France underscores that significant distinctions exist between, for example, fully automated digital services and bespoke professional services. Any comprehensive international framework must reflect these complexities and avoid a “one-size-fits-all” approach.</li> </ul>
ITA	<ul style="list-style-type: none"> <li>• It is worth exploring different nexus rules for different services, reflecting the various ways of doing business.</li> <li>• We believe that the basic principle underlying the taxation on net profits should be preserved for “traditional” business, and that the shift toward source taxation should provide exceptions and safeguards for foreign investors.</li> <li>• Merit in maintaining the option of a service permanent establishment for those “boots on grounds” service providers who may want to constitute a tax liability in the source country and be taxed on a net basis. The withholding taxes should be a last resort method of tax collection, when the enforcement of the tax on net basis is unfeasible, and in any case for predefined categories of services.</li> <li>• In developing possible new rules for services, we think that it is worth exploring different nexus rules for different services, reflecting the various ways of doing business. In cases where the physical presence</li> </ul>

	nexus rule should be applied, while a nexus based on the place of use or consumption, or enjoyment of the service could be defined.
NGA	<ul style="list-style-type: none"> <li>Supports the flexible application of differentiated rules for distinct categories of services.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>Important to understand the effects of distinguishing between modes of services for the purpose of taxation may have on competition and taxpayer's behaviours.</li> </ul>
KOR	<ul style="list-style-type: none"> <li>Applying different nexus by service type raises challenges such as difficulty in classification of services and the need to determine nexus for each newly emerging type of service.</li> <li>Analysis may help develop a single nexus applicable to the broadest range of services or identify criteria for determining which nexus rule should apply to each type of service.</li> </ul>
STP	<ul style="list-style-type: none"> <li>Flat-rate withholding for automated digital services.</li> <li>Minimum revenue thresholds to avoid undue burdens.</li> </ul>

Non-MS Inputs	
IBFD	<ul style="list-style-type: none"> <li>This aligns with the OECD MC approach and also with the OECD/G20 Pillar 1 rules where revenue sourcing rules were specifically aligned with the nature of the services provided.</li> </ul>
YX	<ul style="list-style-type: none"> <li>“As regards the possibility of adopting different rules for different types of services, this submission contends that a uniform approach may be more sensible and effective. Uniform rules would promote simplicity, administrative efficiency, legal certainty, and help prevent abuse. Experience with differentiated tax rules – such as under VAT/GST systems or in the characterisation of income and application of varying source rules – has shown that such approaches are vulnerable to inconsistency, loopholes, and manipulation when applied to economic activities of a similar nature”.</li> </ul>

#### 2.2.1.2.5 Value creation (allocation of a portion to the market jurisdiction)

Issues Note	
	<ul style="list-style-type: none"> <li>No definition</li> </ul>

MS Inputs	
BEL	<ul style="list-style-type: none"> <li>The use of a concept like ‘value creation’ can be problematic since there is currently no common understanding or definition of this concept.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>The term “value creation” does not have a meaningful independent definition.</li> </ul>
RUS	<ul style="list-style-type: none"> <li>Concepts such as "value creation" and "significant economic presence" introduce unnecessary subjectivity and administrative burdens. These frameworks lack globally accepted definitions and create legal uncertainty for taxpayers and authorities.</li> </ul>

<b>SGP</b>	<ul style="list-style-type: none"> <li>To provide clarity, we suggest that the reference to “value creation” should be rephrased as “location-based factors”, which more accurately reflects the market-oriented considerations being described.</li> </ul>
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Non-MS Inputs	
BMG	<ul style="list-style-type: none"> <li>Value creation where the market is, especially in matters of user data and user participation.</li> </ul>
IBFD	<ul style="list-style-type: none"> <li>Value creation is ambiguous</li> <li>Rethinking value creation: The concept of value creation remains relevant and should inform the development of a new nexus for taxation. Its scope should not be confined to the interaction between supply and demand. Instead, it should be interpreted in a manner that responds to modern economic structures, including digitalized service models. Both production and market countries should be viewed as source jurisdictions for tax purposes.</li> <li>Proposal of a new nexus rule (for both digital and traditional services delivered remotely) grounded in revenue thresholds or revenue combined with other indicators of sustained activity.</li> </ul>
TJN	<ul style="list-style-type: none"> <li>Real economic activity: it should be a better proxy for the allocation of taxing rights than the vague notion of “value creation”.</li> </ul>
TJNA	<ul style="list-style-type: none"> <li>“Paragraph 18 argues that the principle of ‘value creation’ could be extended to include user participation. However, a much simpler and less vague way of extending consideration to elements such as use participation is taxation where economic activity takes place regardless of physical presence. Indeed, this is more in line with significant economic presence which has been a much simpler and straightforward tool than Amount A.”</li> </ul>

#### 2.2.1.2.6 Significant economic presence (beyond a certain threshold)

MS Inputs	
<b>COL</b>	<ul style="list-style-type: none"> <li>Flexible and practical approach, such as SEP, is one of the most effective solutions that can address the modern tax challenges generated by digitalization.</li> </ul>
<b>FRA</b>	<ul style="list-style-type: none"> <li>Cautious regarding the generalization of concepts such as “significant economic presence”, which lack legal precision and may generate enforceability issues and risks of disputes.</li> </ul>
<b>NGA</b>	<ul style="list-style-type: none"> <li>Endorses the introduction of new nexus rules, some of which may be based on Significant Economic Presence (SEP)</li> </ul>
<b>RUS</b>	<ul style="list-style-type: none"> <li>Concepts such as "value creation" and "significant economic presence" introduce unnecessary subjectivity and administrative burdens. These frameworks lack globally accepted definitions and create legal uncertainty for taxpayers and authorities.</li> </ul>

STP	<ul style="list-style-type: none"> <li>• SEP should allow for proportional adaptation to the size of the local market.</li> </ul>
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<b>Non-MS Inputs</b>	
<b>ATAF</b>	<ul style="list-style-type: none"> <li>• Anti-Abuse Measures: Rules must be designed to prevent profit shifting through intra-group service fees.</li> <li>• Drawing inspiration from Amount A, Pillar 1.</li> </ul>
<b>AU</b>	<ul style="list-style-type: none"> <li>• Support for SEP with thresholds tailored to accommodate small developing economies in African and elsewhere</li> </ul>
<b>BJA</b>	<ul style="list-style-type: none"> <li>• Place of use or consumption by the recipient of the services. In contrast, value creation and SEP lack objective tests and are too vague to be useful.</li> </ul>
<b>BMG</b>	<ul style="list-style-type: none"> <li>• “In 2019 the G24 developing countries proposed that the solution should be (i) a new test of ‘significant economic presence’, coupled with (ii) rules for apportionment of the total profit based on factors reflecting both supply (production) and demand (consumption). This approach was partially accepted in the proposals under Pillar One, which adopted the principle of taxation of MNEs as unitary enterprises, with formulary allocation of their global income, based on sales. The multilateral convention for Amount A formulated detailed rules”.</li> </ul>
<b>CFS UniN</b>	<ul style="list-style-type: none"> <li>• The framework should establish clear nexus rules for AI-driven services based on data sources, user interactions, and economic impact rather than physical presence, ensuring that the digital transformation does not further erode developing countries' tax bases.</li> </ul>
<b>EFTE</b>	<ul style="list-style-type: none"> <li>• SEP based on a low quantitative threshold.</li> </ul>
<b>G-24</b>	<ul style="list-style-type: none"> <li>• Determining the net income of a Significant Economic Presence (SEP) following the approach of Article 12B UN MC.</li> </ul>
<b>ICRICT</b>	<ul style="list-style-type: none"> <li>• This will also require the abandonment of the outdated permanent establishment principle and the development of a nexus rule based on the principle of Significant Economic Presence (SEP), whereby a taxable presence will be created in the country when a non-resident enterprise has a SEP, defined as purposeful and sustained interaction with the economy of that country, including sales of goods and services by any means, including digital. Approaches: Fractional ex Art 12B and Formulary ex Pillar 1</li> </ul>
<b>YX</b>	<ul style="list-style-type: none"> <li>• A nexus based on economic presence could be developed – one that encompasses both the traditional nexus of physical presence and the modern use of digital or information technologies.</li> </ul>

## 2.3 Issue (c): How the workstream can best define the scope of the protocol in terms of the taxes and services that it will cover.

### 2.3.1 Scope of the protocol

#### 2.3.1.1 *The same scope as DTCs (income taxes)?*

<b>Issues Note</b>	
	<ul style="list-style-type: none"><li>• Looking at the nature of a tax</li><li>• DSTs (if indirect taxes) are excluded?</li><li>• Excise taxes are excluded?</li><li>• Define the scope by looking at the nature of the tax rather than its name? (isn't this what DTCs do already?)</li></ul>

<b>MS Inputs</b>	
AG	<ul style="list-style-type: none"><li>• Taxes covered: income taxes.</li><li>• Services covered: The Protocol should cover a wide range of services, including digital services as well as new and emerging services, and not be limited to traditional services. Avoid consideration of matters relating to taxation of goods or any other matter that is outside of that mandate.</li><li>• The protocol should also include provisions that will prevent tax avoidance, eliminate double taxation as well as prevent shifting of the tax burden by the taxpayers to the consumers of services.</li></ul>
CZE	<ul style="list-style-type: none"><li>• It seems sensible to us to specifically enumerate services covered by the protocol to increase legal certainty</li></ul>
DEU	<ul style="list-style-type: none"><li>• The scope of the protocol should align closely with internationally developed outcomes under Pillar One and Pillar Two to ensure complementarity and avoid duplication.</li><li>• The scope must be carefully aligned with existing tax treaty practice.</li></ul>
IDN	<ul style="list-style-type: none"><li>• Taxes Covered: the scope of taxes covered in the protocol should be defined based on the economic nature or characteristics of the tax. By prioritizing a substantive approach based on economic characteristics—such as the party bearing the tax burden, the tax base, and its relation to income—the protocol would achieve a more consistent and equitable coverage in an international context. The protocol may explicitly list the types of taxes considered to fall within the scope of the agreement, providing examples of relevant characteristics.</li><li>• Services Covered: a clear scope should be established, encompassing various types of services, including technical and managerial services, as well as remote and automated digital services. Defining the scope of services in the Protocol should be prioritized in order to avoid interpretive uncertainty in the future.</li></ul>

<b>IRL</b>	<ul style="list-style-type: none"> <li>Taxes covered: it does not consider it appropriate to draw any conclusions at this stage of the discussions, and believes the sentence on the nature of the tax should be redrafted, removing this reference.</li> </ul>
<b>ITA</b>	<ul style="list-style-type: none"> <li>Taxes covered: further discussion is needed but there is a concern that the broader the taxes covered, the higher the risk of over-taxation.</li> </ul>
<b>NGA</b>	<ul style="list-style-type: none"> <li>Taxes covered: The focus of the Protocol should be on the substance and nature of the tax, irrespective of its label.</li> <li>While the focus of the Protocol should not be on the name or type, the substance and nature of the tax should ensure that taxpayers are unable to shift the burden of the tax onto service consumers.</li> </ul>
<b>RUS</b>	<ul style="list-style-type: none"> <li>Taxes covered: The Protocol should apply solely to direct taxes on income (e.g. corporate/profit tax). Indirect taxes such as VAT should be explicitly excluded.</li> <li>Services covered: A definition of the term «cross-border services in the context of digitalization and globalization of the economy» will require a special attention and should include all services with the view to eliminate complexities in distinguishing between service types or methods of service providing.</li> <li>Highlights the hybrid nature of certain services (including SaaS («software as a service») and information covered under UN Model Convention Article 12). To enhance legal certainty, we propose to discuss this issue within the Protocol to clearly differentiate these kinds of income and establish their appropriate tax treatment.</li> </ul>
<b>SEN</b>	<ul style="list-style-type: none"> <li>Services Covered: le champ d'application à définir devrait être suffisamment large pour couvrir un éventail de services, y compris les services numériques.</li> <li>Goods vs services: le premier protocole préliminaire porte sur la taxation des services transfrontaliers. En conséquence, le groupe de travail devrait se concentrer sur son mandat, à savoir la taxation des services transfrontaliers, et éviter d'examiner les questions relatives à la taxation des biens ou toute autre question qui ne relève pas de ce mandat.</li> <li>Taxes Covered: le protocole devrait clairement indiquer l'impôt sur le revenu comme la nature de l'impôt visé.</li> <li>Inclure des dispositions visant à prévenir l'évasion fiscale, à éliminer la double imposition et à éviter le transfert de la charge fiscale des contribuables aux consommateurs de services.</li> </ul>
<b>SGP</b>	<ul style="list-style-type: none"> <li>Services covered: consider whether the same tax rules should apply to all services or differentiated rules may be more appropriate, taking into account the nature of the services and both the administrative work for tax administrations and compliance efforts of businesses. We also encourage adopting a calibrated approach to ensure that the protocol focuses on services that present the greatest relevance or risk from a tax policy perspective.</li> </ul>

	<ul style="list-style-type: none"> <li>Taxes covered: the focus of the Workstream should be on corporate income taxation of services.</li> </ul>
<b>ESP</b>	<ul style="list-style-type: none"> <li>It is set out that the primary goal of any new rules should be to support domestic resource mobilization by providing for a “fair” allocation of taxing rights. During the Workstream II meetings it was already stated that term “fair” is an undetermined concept. We have no definition, therefore, we suggest including language that says this term is an undefined concept and that its meaning has not been agreed.</li> </ul>
<b>GBR</b>	<ul style="list-style-type: none"> <li>Lack of clear definition of the scope.</li> </ul>

<b>Non-MS Inputs</b>	
<b>ATAF</b>	<ul style="list-style-type: none"> <li>Taxes Covered: The protocol should explicitly include all income taxes and exclude indirect taxes (e.g., VAT, GST and their functional equivalent) to avoid confusion and ambiguity. The rules should be designed to forestall a scenario where the burden of the resultant tax is shifted to the local consumers of the product.</li> <li>The in-scope services should encompass traditional and digital services, including, but not limited to: i. Digital services (e.g., SaaS, PaaS, advertising). ii. Business-to-business services (e.g., legal, accounting, intra-group payments). iii. Business-to-consumer services.</li> </ul>
<b>ATM</b>	<ul style="list-style-type: none"> <li>“fees for technical or business services” should be precisely delineated to prevent overlapping national interpretations that breed complexity and disputes and clearly separate from “royalties”. “a blanket approach covering “any service, irrespective of where performed or the nature of the service” (as seen in the proposed UN Model Article XX) raises serious concerns”.</li> <li>“One option is to limit the application of source-country taxing rights to services of a particular character (for example, automated digital services or technical consultancy, as was initially considered), or to impose a materiality threshold (such as a de minimis amount or duration below which no tax applies, akin to a services permanent establishment threshold of X days).”</li> </ul>
<b>AU</b>	<ul style="list-style-type: none"> <li>Expressly exclude VAT/GST but cover taxes that can be shifted onto the consumer.</li> <li>Broad scope of services covered.</li> </ul>
<b>BJA</b>	<ul style="list-style-type: none"> <li>The taxation of income derived from employment services is currently absent from the discussion. It is important to consider whether income from employment services and income from independent services should be treated differently. This differentiation could potentially undermine neutrality and create opportunities for arbitrage.</li> </ul>
<b>BMG</b>	<ul style="list-style-type: none"> <li>Whether the definition of technical services should consider the transfer of intellectual property or not. This protocol should include, but not be limited to, taxation of Automated Digital Services (ADS) [whatever that means] and all other services.</li> </ul>

<b>CFS UniN</b>	<ul style="list-style-type: none"> <li>Scoping by nature: “All Income-Type Taxes: Including corporate income taxes, withholding taxes, and digital service taxes regardless of legal classification or administrative designation.</li> <li>Revenue-Based Taxes: Recognising that some jurisdictions prefer turnover-based taxation for administrative simplicity, particularly for smaller service providers.</li> <li>Emerging Tax Types: Broad definitional language capturing future tax measures designed to address cross-border service income.”</li> </ul>
<b>ETFE</b>	<ul style="list-style-type: none"> <li>Coordinated taxation of windfall or excess profits.</li> <li>Should also address issues such as transparency and effective international cooperation for tax matters.</li> </ul>
<b>G-24</b>	<ul style="list-style-type: none"> <li>Including in the Protocol the concept of <i>Significant Economic Presence</i>, as adopted through domestic legislation, which has already been implemented in some countries.</li> </ul>
<b>IBFD</b>	<ul style="list-style-type: none"> <li>No ring-fence the digital economy from the rest of the economy.</li> </ul>
<b>ICRICT</b>	<ul style="list-style-type: none"> <li>The protocol could address the key weaknesses of Amount A, so to design a comprehensive solution applicable to all MNEs. The new Article 12AA of the UN model treaty, which provides for the application of withholding taxes on technical services and automated digital services, could be the basis for the protocol.</li> <li>The protocol could also provide a way to standardize and harmonize the existing unilateral measures such as the Digital Services Taxes (DSTs);</li> </ul>
<b>ITUC &amp; PSI</b>	<ul style="list-style-type: none"> <li>Broad definition of services, including both business-to-business and consumer-facing activities, as well as automated digital services.</li> </ul>
<b>SC</b>	<ul style="list-style-type: none"> <li>Services Covered: the protocol should have a broad scope and at a minimum cover all digital and digitally delivered services, especially including automated digital services as defined in Article 12B of the UN Model Tax Convention.</li> <li>Taxes covered: For the scope of taxes covered, the protocol should focus exclusively on income taxes.</li> </ul>
<b>TJN</b>	<ul style="list-style-type: none"> <li>Services Covered: maintain a broad scope of services, encompassing all cross-border services. Ring-fencing or adjectivizing services often leads to unnecessary complexity.</li> <li>Taxes Covered: DSTs are intrinsically connected with the lack of effectiveness of existing rules and should not be kept out of the scope of the discussion.</li> </ul>
<b>TWN</b>	<ul style="list-style-type: none"> <li>Taxes Covered: DSTs should be treated as income tax in order to allow the taxpayer to claim foreign tax credit in its place of domicile and obviate any allegation of double taxation.</li> </ul>
<b>YX</b>	<ul style="list-style-type: none"> <li>Taxes Covered: the focus should be on income taxes.</li> <li>Services Covered: covering services ranging from traditional services delivered via digital means to purely digital services. “A broad scope is essential as the distinction between traditional and digital services is often blurred. Emerging technologies can transform conventional services into digital ones, making it difficult to establish classification</li> </ul>

	<p>criteria that will remain relevant as new service models evolve. Moreover, there is no clear policy rationale for including some types of services while excluding others. Doing so could undermine the protocol's purpose as existing rules would likely continue to apply in such cases.”</p> <ul style="list-style-type: none"> <li>• Services vs taxation of the digitalized economy: “While the taxation of income from cross-border services may overlap with the issue of taxing the digitalized economy, the two are conceptually distinct. The latter generally has a wider scope, potentially encompassing indirect taxes, particularly general consumption taxes, on services supplied by foreign businesses to resident consumers, as well as the income taxation of individuals working remotely or participating in the sharing or gig economy. Although general consumption taxes, such as value-added tax (VAT) or goods and services tax (GST), represent a major source of revenue for both developed and developing economies, and an increasing number of jurisdictions have adopted rules to tax cross-border supply of services including digital services, there is still no international framework to coordinate the implementation of such rules, apart from soft law developed by the OECD (i.e. <i>The International VAT/GST Guidelines</i> (2017)). The lack of coordination can lead to inconsistencies, unintended double taxation, or non-taxation.<sup>3</sup> While an international agreement on VAT/GST is clearly desirable, it may be more appropriate to address this under a separate workstream.”</li> </ul>
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### 2.3.2 Approach

#### 2.3.2.1 Source State taxation and optionality?

Issues Notes Point	
	<ul style="list-style-type: none"> <li>• Shared taxing rights?</li> </ul>

MS Inputs	
<b>AG</b>	<ul style="list-style-type: none"> <li>• Since many countries face challenges in this area due to the restrictions imposed by tax treaties, the protocol should include a multilateral solution to these restrictions such as a fast-track instrument to update the existing treaties or a provision in the Protocol that could be applied in place of existing treaties.</li> <li>• The Protocol should also adhere to the principle of simplicity and ease of administration as laid out in the Terms of Reference</li> <li>• Due to the significant differences in the ways that UN member States tax income from cross-border services, the Protocol can provide different options of implementing the tax rules to enhance effectiveness and allow member States to adopt the rules that are most suitable.</li> </ul>
<b>BEL</b>	<ul style="list-style-type: none"> <li>• We advocate that further economic analysis is needed on the basis of which taxing rights are to be allocated</li> </ul>

	<ul style="list-style-type: none"> <li>One single approach may not be suitable for all. Differentiated solutions tailored to the unique circumstances of each Member State. Incorporating more flexibility within the protocol could promote broader participation to the protocol.</li> </ul>
<b>BRA</b>	<ul style="list-style-type: none"> <li>The Protocol should incorporate compatibility clauses to avoid legal conflicts with existing bilateral tax treaties. Multilateral progress in international tax cooperation must not come at the expense of already hard-won source-based taxing rights enshrined in current double taxation agreements (DTAs).</li> <li>Compatibility provisions should make clear that the Protocol serves as a minimum standard, which does not preclude the adoption or maintenance of broader source taxation rights through bilateral or domestic legislation.</li> <li>The Protocol must uphold the principle of regulatory autonomy, recognizing that service taxation intersects with broader public policy goals, including market relevance, digital governance, investment promotion and industrial development. Normative flexibility is particularly important for countries seeking to adapt their tax frameworks to evolving economic conditions or to adopt progressive taxation systems that align with their national development strategies.</li> <li>The Protocol should not create obligations that limit the ability of countries to introduce or maintain tax measures, particularly when such measures are aimed at safeguarding domestic fiscal interests.</li> <li>Consider including guidelines and model provisions that can be readily incorporated into domestic legislation. Such tools can facilitate uniform application, reduce ambiguity, and promote consistency across jurisdictions.</li> <li>The Protocol must be accompanied by a framework for technical assistance, peer learning, and institutional capacity-building;</li> </ul>
<b>CZE</b>	<ul style="list-style-type: none"> <li>Conducting a rigorous analysis of what are all possible services that could be taxed, and what are pros and cons of possible nexus and approaches to taxation of services, and what are their economic impacts.</li> </ul>
<b>FRA</b>	<ul style="list-style-type: none"> <li>Build on pillar 1. As a massive 200B\$ would be redistributed it is important, considering our limited resources, to avoid any duplication of this work.</li> <li>France also strongly recommends, in the interest of national sovereignty, that the protocol developed by the committee follows an elective approach. Being one of the jurisdictions with the most extensive networks of bilateral tax agreements globally, France would like to recall that tax treaties are the result of specific bilateral relationships and the outcome of mutual concessions. In that regard, a one-fits-all approach which would disrupt the general balance of a large proportion of tax treaties would be inappropriate. For sovereignty reasons, jurisdictions should remain free to engage</li> </ul>

	<p>if they so wish in bilateral discussions with treaty partners, and to modify tax treaties if they consider the general balance mutually beneficial.</p>
<b>DEU</b>	<ul style="list-style-type: none"> <li>International efforts should focus on identified gaps and the solutions, already developed in Amount A under the Inclusive Framework on BEPS.</li> </ul>
<b>ITA</b>	<ul style="list-style-type: none"> <li>Make an economic analysis of the potential impacts of withholding taxes on cross border services, also through the experience of businesses;</li> <li>The relationship between the protocol and the rules in existing tax treaties should be addressed;</li> </ul>
<b>NLD</b>	<ul style="list-style-type: none"> <li>Proposal to refer to the net base (formulary apportionment) alternative in art 12B.</li> <li>Consider whether consensus could be reached based on shared taxing rights with respect to services.</li> </ul>
<b>NOR</b>	<ul style="list-style-type: none"> <li>A thorough analysis of the implications and effects of different approaches under consideration would be essential to understand the impact on tax revenues in source and residence states, trade and investment, and economic growth in general.</li> <li>The INC could invite the World Bank, the IMF, the OECD and UN DESA to jointly perform this analysis.</li> </ul>
<b>RUS</b>	<ul style="list-style-type: none"> <li>Follow the approach of Art. 12AA UN MC (2025);</li> <li>Implement such an approach through an international convention under the UN auspice, which would amend Double Tax Agreements on a coordinated manner and would eliminate potential conflict between different treaty obligations.</li> <li>Coordination information exchange instruments. Standardized information requirements, including detailed nature and value of services provided, identification of service providers, and their tax treatment concerning income derived from such services.</li> </ul>
<b>SAU</b>	<ul style="list-style-type: none"> <li>Differentiate nexus rules depending on the business model without applying a wide blanket provision on all types of cross-border services.</li> </ul>
<b>SEN</b>	<ul style="list-style-type: none"> <li>Offrir différentes options de mise en oeuvre des règles fiscales afin d'en améliorer l'efficacité et la résilience tout en garantissant la cohérence à l'échelle internationale, la stabilité et la certitude fiscale</li> <li>Étant donné que de nombreux pays sont confrontés à des difficultés en matière d'imposition des services transfrontaliers en raison des restrictions imposées par les conventions fiscales, le Protocole devrait inclure une solution multilatérale à ces restrictions, telle qu'un instrument accéléré permettant de mettre à jour les conventions existantes avec les règles qui seront élaborées dans le cadre du Protocole, ou une disposition du Protocole qui pourrait s'appliquer à la place des conventions existantes.</li> </ul>

SGP	<ul style="list-style-type: none"> <li>Optionality within the protocol, which allows Member States to opt in or opt out of mechanisms within the protocol depending on their needs, circumstances and policy preferences. This flexible and inclusive approach could allow each Member State to maximise the benefits of the protocol based on its unique circumstances.</li> <li>Carve-outs for smaller businesses may be necessary, so that they need not face disproportionate compliance burdens under cross-border tax rules.</li> <li>Sovereignty: any work undertaken by this Committee or Workstream should respect the integrity of treaties that have been bilaterally negotiated and mutually agreed. Jurisdictions must remain free to bilaterally agree on taxing rights based on their needs</li> </ul>
ESP	<ul style="list-style-type: none"> <li>As for the conclusion in paragraph 22, the phrase “shared taxing rights”, it should be noted that not all countries agreed with this conclusion.</li> </ul>
SWE	<ul style="list-style-type: none"> <li>There has not been enough focus on the specific type of issue(s) that has been identified and considered as problematic and needs to be addressed due to the provision of cross-border services in a digitalized and globalised economy, i.e. the protocol should not focus broadly on “taxation of services”.</li> </ul>
CHE	<ul style="list-style-type: none"> <li>Need for <b>non-discriminatory taxation</b> of income from services rendered by non-residents in comparison to resident enterprises that engage in the same business activities. (WHT on gross).</li> </ul>
GBR	<ul style="list-style-type: none"> <li>Informed by economic analysis and input from business.</li> </ul>

Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>“Many African countries are bound by outdated treaties based on older UN/OECD Models, which restrict their ability to tax cross-border services, even though the services are consumed locally. As such, any viable solution must include some sort of treaty-based fix that would apply to the existing treaty network and be acceptable to parties in future negotiations or readily acceptable by the provision of the protocols to all parties to the protocol.”</li> </ul>
ATM	<ul style="list-style-type: none"> <li>Optional gross-or-net system for services. (not clear if the option/election should be left to the countries based on their administrative capacity or to the taxpayers). Strengthen DTR.</li> <li>Clear sourcing rules.</li> <li>UN should conduct or commission an economic impact assessment of the new service and royalty provisions to evaluate how the rules affect investment, trade in services, and tax revenues for different country groups.</li> <li>Provide definitions of terms.</li> </ul>
AU	<ul style="list-style-type: none"> <li>Any viable solution for the continent must include some sort of treaty-based fix that would apply to the existing treaty network and be acceptable by parties in future negotiation or be readily</li> </ul>

	acceptable by the provision of the protocols to all parties to the protocol.
<b>BJA</b>	<ul style="list-style-type: none"> <li>• Yes, with the exception of government services.</li> <li>• Should the primary taxing rights of source countries be subject to fixed limits, such as a uniform withholding tax threshold, or should these limits be determined by the relevant treaty partners?</li> </ul>
<b>BMG</b>	<ul style="list-style-type: none"> <li>• Allocation of taxing rights guided by the principles of unitary taxation and formulary apportionment;</li> </ul>
<b>CFS UniN</b>	<ul style="list-style-type: none"> <li>• The protocol scope should be defined functionally rather than through legal classifications, covering all income-type taxes regardless of nomenclature whilst establishing comprehensive service categories including professional, digital, financial, and intra-group services. [scoping methodology]</li> <li>• The workstream would benefit from more systematic analysis of revenue losses attributable to current rule inadequacies.</li> <li>• Broad scope of services covered but practical considerations justify specific provisions for distinct service categories. Service definitions should focus on economic substance rather than delivery mechanisms. Rules distinguishing between digital, remote, and physical service provision create artificial boundaries that taxpayers can exploit through restructuring whilst violating neutrality principles. Instead, definitions should capture economic functions: value creation processes, market engagement mechanisms, and revenue generation activities. This approach ensures continued relevance as technology evolves whilst preventing avoidance through artificial categorisation.</li> <li>• The Committee should permit graduated implementation enabling countries to adopt provisions according to administrative capacity and development priorities.</li> </ul>
<b>ETFE</b>	<ul style="list-style-type: none"> <li>• New Article 12AA of the UN model treaty, which provides for the application of withholding taxes on technical services and automated digital services, could be the basis for the protocol. An instrument such as the UN's Fast Track Instrument could help implement these protections broadly.</li> </ul>
<b>G-24</b>	<ul style="list-style-type: none"> <li>• The most promising approach for a sustainable solution would be net income taxation either via fractional apportionment under Article 12B UN MC or via formulary apportionment under Amount A, Pillar One. Promoting net taxation via formulary apportionment using the MLC's methodology – combined with the GLoBE – that establishes technical standards for formulary apportionment. (tax nexus based on sales volume + sourcing rules for sales).</li> <li>• New rules should be implemented progressively.</li> </ul>
<b>GATJ</b>	<ul style="list-style-type: none"> <li>• Urge all Workstreams, including Workstream II, to consider solutions that entail the introduction of a real multilateral system.</li> </ul>
<b>IBFD</b>	<ul style="list-style-type: none"> <li>• No one-size-fits-all approach, recommending instead a coordinated system of acceptable options. The aim should be</li> </ul>

	coherence, not uniformity. The protocol can provide a standard reference text—with preamble language, optional model articles, and guidelines for relief mechanisms.
ICC	<ul style="list-style-type: none"> <li>“there is a need to first establish the fundamental principles on which taxing rights are to be allocated, before attempting to construct detailed allocation infrastructure. [...] It is essential that the substantive protocols are in accordance with the principles of the Framework Convention, so the protocols should not be completed before the principles are agreed.”</li> <li>Involving taxpayers directly in discussions and establishing a include a Business Advisory Council to bring in diverse views from across sectors and regions.</li> </ul>
ICRICT	<ul style="list-style-type: none"> <li>The protocol should introduce a new framework based on unitary taxation and formulary or fractional apportionment, aligning taxing rights with real economic activity. By abandoning the separate entity principle and recognizing MNEs as integrated global enterprises, the protocol can ensure a fair allocation of taxing rights and that profits are allocated using objective factors such as employment, sales, and assets.</li> </ul>
ITUC & PSI	<ul style="list-style-type: none"> <li>Framework based on optionality (principle of optionality), where jurisdictions can adopt one or more models depending on capacity and context. These should include: <ul style="list-style-type: none"> <li>A Significant Economic Presence (SEP) model, with nexus based on digital sales and profit apportionment using employment and sales;</li> <li>Source-based withholding, as a simpler tool for revenue collection where net basis taxation is infeasible, though potentially temporary;</li> <li>Digital services taxes (DSTs) as short-term measures during the transition to more long-term tax solutions, with safeguards against regressive impacts;</li> </ul> </li> </ul>
SC	<ul style="list-style-type: none"> <li>Provide a menu of options suited to different countries and contexts, rather than trying to find a single one-size fits all solution for the whole wor.</li> <li>The rules must be designed in a way that they can be taken forward by a “coalition of the willing”, and need not require universal adoption in order to work. To incentivise countries to join, DTR would be given only to MS parties to the protocol.</li> <li>Interaction with DTCS: <ul style="list-style-type: none"> <li>have the protocol override existing treaties, by using wording similar to Article 46 of the draft Amount A Multilateral Convention.</li> <li>UN Fast track Instrument.</li> </ul> </li> </ul>
TJN	<ul style="list-style-type: none"> <li>A multilateral approach that treats multinational companies as the unitary entities they are and allocates their profits based on their real economic activity. Countries should use the Protocol as an</li> </ul>

	opportunity to transition from a bilateral approach to a multilateral system, and to start taxing MNEs as unitary entities.
TJNA	<ul style="list-style-type: none"> <li>• Transitional approach, allowing for WHT on gross at the beginning, while moving towards unitary taxation.</li> <li>• Need to explore measures that would protect parties to the Protocol from retaliatory measures.</li> <li>• Take into special consideration the situation of developing countries, in line with the principle of special and differential treatment.</li> <li>• Caution against any force of entry provision that will unduly give one state undue power.</li> </ul>
TWN	<ul style="list-style-type: none"> <li>• “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”.</li> </ul>
YTJN	<ul style="list-style-type: none"> <li>• Earmarking revenue to fund digital literacy and affordable e-learning access.</li> </ul>

# Annex WS III

## 3 WS III: (Early) Protocol II on Tax Disputes

### 3.1 Issue (a): whether there are additional barriers to the prevention and resolution of tax disputes that Member States encounter

#### 3.1.1 Reasons for work on dispute prevention and resolution

Issues Note	
	<ul style="list-style-type: none"><li>• Domestic court's resolution of cross-border tax disputes are: time-consuming; resource-intensive; non-binging upon other jurisdictions.</li><li>• Tax information asymmetry to the disadvantage of tax authorities.</li></ul>

MS Inputs	
AG	<ul style="list-style-type: none"><li>• Power asymmetries in arbitration proceedings and MAP engagements with more experienced tax administrations.</li></ul>
MAR	<ul style="list-style-type: none"><li>• Time limitations preventing thorough analysis of voluminous documentation</li><li>• Language barriers when dealing with documentation prepared in foreign languages</li></ul>
NGA	<ul style="list-style-type: none"><li>• Complexity of Transfer Pricing issues and divergent interpretation of the arm's length principle</li></ul>
TUN	<ul style="list-style-type: none"><li>• Arbitration<ul style="list-style-type: none"><li>○ perçu comme une restriction du droit souverain de chaque pays d'interpréter ses propres règles fiscales.</li><li>○ pourrait désavantager les pays en développement, dans la mesure où il engendre souvent des coûts importants,</li><li>○ <b>l'arbitrage obligatoire</b> (il peut être envisagé comme option) et privilégié des mécanismes alternatifs de règlement des différends</li><li>○ priority on cross-border disputes.</li><li>○ Supports optionality approach.</li></ul></li></ul>

Non-MS Inputs	
GATJ	<ul style="list-style-type: none"><li>• The restriction of the ultimate goal of the WS III outlined in paragraph 9 of the Issues notes is inconsistent with the broader goals outlined in paragraph 7 of the FC (WS I).</li><li>• the goal stated in paragraph 9 picks up an element that is not mentioned in the ToR, namely "<i>cross-border trade and investment</i>", and specifies this as a method to increase DRM. It cannot be automatically assumed that cross-border trade and investment will lead to increased DRM.</li></ul>

### 3.1.2 Cross-cutting challenges

Issues Note	
	<ul style="list-style-type: none"> <li>• Concerns both Corporates and individuals;</li> <li>• TP, PE, tax residence, treatment of digital services, capital gains and disposal of attest;</li> <li>• Causes: <ul style="list-style-type: none"> <li>◦ Ambiguity or complexity of substantive and procedural rules;</li> <li>◦ Different interpretation/application of rules or facts;</li> <li>◦ Lack of common set of rules applicable cross-border;</li> </ul> </li> </ul>

Non-MS Inputs	
IBFD	<ul style="list-style-type: none"> <li>• The complexity and interdisciplinary nature of TP issues, which require expertise in law, economics, accounting, international tax, and valuation, among others.</li> <li>• Procedural inefficiencies, including language barriers, communication delays, and lack of streamlined MAP/APA processes.</li> </ul>

### 3.1.3 Prevention of tax disputes

Issues Note	
	<ul style="list-style-type: none"> <li>• Providing clearly drafted legislation;</li> <li>• Providing supplementary guidelines;</li> <li>• Cooperative compliance;</li> <li>• Advance Pricing Agreements (APAs) (uni-, bi- or multi-lateral);</li> <li>• Simultaneous controls and joint-audits;</li> <li>• Mediation for tax dispute</li> </ul>

Non-MS Inputs	
BEPS MG	<ul style="list-style-type: none"> <li>• (link to WS II) The majority of tax disputes concern transfer pricing. The best way to prevent such disputes is to replace this system with one that can ensure that MNEs are taxed only once, and at least once and addresses both direct and indirect taxes.</li> </ul>
EFTE	<ul style="list-style-type: none"> <li>• (Link to WS II) The primary barriers to effective dispute prevention lie in the structural design of international tax rules, particularly the arm's length principle and residence-based taxation, which fuel incoherence and litigation.</li> </ul>
IBFD	<ul style="list-style-type: none"> <li>• Concur with the concern expressed regarding unilateral APAs. Although useful for resolving domestic uncertainty, they may increase the risk of cross-border disputes if the counterparty jurisdiction does not accept the result. Priority should be given to bilateral and multilateral APA frameworks.</li> </ul>

	<ul style="list-style-type: none"> <li>Supplementary tools such as online portals, helpdesks, public consultations, and taxpayer education programmes reduce compliance burdens and support voluntary compliance;</li> <li>consider the inclusion of non-binding, multilateral risk assessment initiatives such as the OECD's International Compliance Assurance Programme (ICAP) and EU's European Trust and Cooperation Approach (ETACA). While they do not provide legal certainty, these cooperative platforms have proven effective in reducing audit risk and promoting early alignment on TP positions.</li> </ul>
OECD (CTPA)	<ul style="list-style-type: none"> <li>Risk assessment enables tax administrations to focus resources on high-risk transactions and exclude low-risk taxpayers from unnecessary scrutiny. It also contributes significantly to administrative efficiency and taxpayer certainty – reducing the cost of compliance and the cost of administration.</li> </ul>
TJN	<ul style="list-style-type: none"> <li>Replace TP with unitary taxation and formulary apportionment</li> <li>Reviewing the existing legal framework as it physiologically relies on MAPs: Articles. 3(2), 4(2)and(3), 7(3). This approach makes the rise of MAPs an outcome by design as rules cannot be applied without entering into dispute resolutions.</li> <li>Transparency: One of the reasons why traditional jurisprudence is public and many countries apply a system of binding or authoritative precedent, is to foster transparency and prevent future disputes on the identical issues. Operative parts and reasons of MAP decisions should be published and made available to all parties to the Convention. Only in this way can dispute resolution serve its implicit role of dispute prevention.</li> </ul>

### 3.1.4 Resolution of tax disputes

Issues Note	
	<ul style="list-style-type: none"> <li>State-to-State MAP in DTCs (network of over 3000 DTCs); <ul style="list-style-type: none"> <li>No obligation to reach an agreement;</li> <li>Lengthy procedure;</li> <li>Difficulty in accessing the MAP;</li> <li>Burdensome for countries;</li> </ul> </li> <li>Mandatory Arbitration <ul style="list-style-type: none"> <li>lack of experience in the resolution of tax disputes;</li> <li>constitutional limits may prevent some countries from adopting it;</li> </ul> </li> <li>Mediation;</li> <li>FTA, BITs, GATT, GATS, BEPS MLI and EU DRD;</li> </ul>

MS Inputs	
SAU	<ul style="list-style-type: none"> <li>Beyond constitutional constraints, mandatory arbitration lacks established procedures and enforcement systems.</li> </ul>
ESP	<ul style="list-style-type: none"> <li>Mediation raises significant concerns as it might not be accepted, as a mechanism for resolving tax disputes, due to the inherent legal and institutional characteristics of tax obligations, which differ fundamentally from the types of disputes typically suited to</li> </ul>

	mediation. Tax obligations are public law matters governed by principles of legality, equality, and non-discretionary enforcement. Introducing mediation, which is by nature a flexible, confidential, and non-binding process, could undermine legal certainty, transparency and accountability. Allowing tax obligations to be negotiated through mediation could be perceived as discretionary enforcement, potentially eroding public trust in the tax system.
SWE	<ul style="list-style-type: none"> <li>Denial of access to MAP is getting more common from the other Competent Authority and also that sometimes the other Competent Authority do not receive a notification when an application is rejected.</li> </ul>
GBR	<ul style="list-style-type: none"> <li>While we understand that some countries have had negative experiences of arbitration in the context of Investor-State disputes under bilateral investment agreements, we do not think that such arbitration is comparable to arbitration to resolve MAP cases or that similar concerns will apply to MAP arbitration.</li> <li>UK Alternative Dispute Resolution (ADR) programme.</li> </ul>

Non-MS Inputs	
BEPS MG	<ul style="list-style-type: none"> <li>Unlike traditional jurisprudence, MAP decisions are protected by the cloak of confidentiality of the diplomatic negotiation process. External parties have no information on what grounds disputes are settled, whether competent authorities are doing so consistently across all individual taxpayers or in relation to all other countries.</li> </ul>
GATJ	<ul style="list-style-type: none"> <li>APAs do not improve tax certainty, as proved by the Apple CJEU judgment.</li> <li>APAs are secret to the public.</li> </ul>
ITUC & PSI	<ul style="list-style-type: none"> <li>Investor– state dispute mechanisms, as found in trade and investment agreements, have enabled companies to bypass domestic systems, challenge tax reforms, and shape fiscal policy behind closed doors.</li> <li>Investors already have access to multiple forums for dispute resolution, including ICSID, WTO panels and mechanisms under bilateral investment treaties. There is no justification for including investors in the dispute settlement structures of the UN Tax Convention.</li> </ul>
OECD (CTPA)	<ul style="list-style-type: none"> <li>The OECD is currently exploring alternatives to arbitration such as expert opinions.</li> </ul>

### 3.2 Issue (b): whether the protocol should address only tax disputes involving cross-border transactions or also purely domestic disputes

#### 3.2.1 Scope

Issues Note

	<ul style="list-style-type: none"> <li>Protocol limited to resolve disputes “arising under the Framework Convention and its protocols”;</li> <li>Obligations under the Protocol should not affect existing obligations regarding tax dispute resolution under DTCs (FTA, BITs, GATT, GATS, BEPS MLI and EU DRD (?));</li> <li>Rationalise and provide a hierarchy of existing mechanisms;</li> <li>Scope limited to address instances of cross-border tax disputes where there are no applicable DTCs;</li> <li>In the view of some participants, subparagraph (f) of paragraph 10 of the ToR is not limited to cross-border transactions. In their views, taxpayers are equally in need of tax certainty with respect to purely domestic tax issues (i.e., those that do not involve transactions that take place cross-border). However, there was no similar convergence of views regarding the most common issues that arise in the purely domestic context.</li> </ul>
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MS Inputs	
AG	<ul style="list-style-type: none"> <li>Domestic disputes: while the primary legal commitments under the protocol should remain focused on cross-border tax issues, the protocol could offer optional guidance or practices that may also support the resolution of purely domestic disputes, particularly where domestic and international aspects are intertwined;</li> <li>Mechanism: a state-to-state dispute resolution mechanism, both bilateral and multilateral.</li> <li>Not support resolution of tax disputes under certain types of arbitration, especially investment styled arbitration</li> <li>Not support for baseball styled arbitration, final offer arbitration or any similarly styled dispute resolution mechanism.</li> </ul>
BEL	<ul style="list-style-type: none"> <li>The protocol only addresses tax disputes involving cross-border transactions and doesn't address purely domestic disputes;</li> </ul>
COL	<ul style="list-style-type: none"> <li>Should be limited to the prevention and resolution of disputes involving more than one jurisdiction;</li> </ul>
FRA	<ul style="list-style-type: none"> <li>The protocol should not create additional instruments whose rules diverge from the existing substantive and procedural rules, in particular those laid down by the UN and OECD Model Tax Conventions models;</li> <li>the scope of the Protocol should neither prevail over existing dispute resolution or prevention instruments, nor overlap with them. If new tools were to be developed under the second Protocol, they should only complement other existing instruments.</li> <li>the protocol addresses only tax disputes involving cross-border transactions arising under the future Framework Convention and its protocols, with the exception of domestic disputes.</li> </ul>
DEU	<ul style="list-style-type: none"> <li>Risk assessment procedures, simultaneous as well as joint audits;</li> <li>Inclusion of mechanisms for purely domestic tax disputes as less appropriate.</li> </ul>

IDN	<ul style="list-style-type: none"> <li>Regarding domestic disputes, it is better to leave it to the country's sovereignty. Since every country's dispute resolution system is very unique, establishing a new model in domestic dispute resolution might require more resources;</li> </ul>
ITA	<ul style="list-style-type: none"> <li>The protocol should encompass disputes relating to the Framework Convention and to the associated protocols only;</li> <li>It should regulate the relationship with other instruments already in force;</li> <li>(link to WSI) It should create the legal basis to prevent and resolve disputes in cases of the absence of double tax treaties.</li> </ul>
MAR	<ul style="list-style-type: none"> <li>the protocol should focus only on cross-border issues as domestic tax disputes should be resolved through each country's own domestic legal systems and procedures.</li> </ul>
NLD	<ul style="list-style-type: none"> <li>Coordination: commitments under the FC should not affect existing obligations under the EU Arbitration Convention.</li> </ul>
NGA	<ul style="list-style-type: none"> <li>The protocol should primarily address cross-border tax disputes</li> <li>Any dispute resolution mechanism on purely domestic disputes should remain optional, to respect national sovereignty and differences in legal frameworks.</li> <li>The protocol should encourage the sharing of best practices on domestic dispute resolution and provide guidance rather than impose binding obligations.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>Importance of robust risk assessment program in tax administrations;</li> <li>The protocol should mainly serve as a mechanism to solve disputes under the FC and its Protocols;</li> <li>Expanding Protocol II to bilateral tax treaties could be explored as an option by MS willing and able to do so.</li> <li>It should be clarified whether the Protocol should also apply to disputes relating to the FC itself.</li> <li>The Protocol should not apply to existing tax treaties or the Multilateral Instrument on BEPS.</li> <li>The scope should exclude tax disputes that arise under FTA, GATT and GATS as they differ in nature and scope.</li> </ul>
KOR	<ul style="list-style-type: none"> <li>(Link to WS I) the Framework Convention should address procedural issues arising from its implementation, while the protocol focus on double taxation issues that may arise between jurisdictions which are parties to the protocol.</li> <li>Protocol 2 could also provide a mechanism to double taxation issues related to other protocols which may be developed later.</li> <li>since domestic disputes are matters of each jurisdiction's sovereignty, Protocol 2 should be limited to resolving cross-border disputes.</li> </ul>
STP	<ul style="list-style-type: none"> <li>Although the main focus should be on cross-border disputes, the protocol may encourage the reinforcement of good practices at the domestic level, such as tax mediation or internal administrative review, in a non-binding manner.</li> </ul>

	<ul style="list-style-type: none"> <li>It is essential that the Protocol provides a multilateral legal basis to resolve disputes even between countries without treaties between them.</li> </ul>
SAU	<ul style="list-style-type: none"> <li>Scope limited to tax disputes that arise from the interpretation or application of international tax provisions.</li> <li>The protocol should prioritise addressing cross-border disputes where there is no applicable DTC.</li> </ul>
ESP	<ul style="list-style-type: none"> <li><b>A multilateral framework</b> that could assist countries in resolving cross-border tax disputes</li> </ul>
CHE	<ul style="list-style-type: none"> <li>The protocol should focus on dispute resolution rather than dispute prevention.</li> </ul>

Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>Any attempt to regulate purely domestic disputes through the protocol may come off as an overreach.</li> <li>No investment-style arbitration</li> <li>The protocol should seek commitment from parties that tax disputes should only be resolved via the established procedure for settling tax disputes and not via a trade dispute resolution mechanism;</li> <li>No baseball arbitration, not final offer arbitration no;</li> <li>should deliver practical solutions for countries with limited treaty networks and avoid importing mechanisms that replicate known imbalances in existing forums</li> </ul>
ATM	<ul style="list-style-type: none"> <li>The Protocol should mandate a robust Mutual Agreement Procedure (MAP) between competent authorities, with clear timelines, and provide for mandatory binding arbitration if disputes remain unresolved after a specified period;</li> <li>The UN Convention can address this by designing an arbitration process that is both balanced and accessible (e.g., by drawing arbitrators from both developed and developing countries, and by offering options for regional arbitration centers), while still being binding</li> </ul>
AU	<ul style="list-style-type: none"> <li>Any attempt to regulate purely domestic disputes through the protocol may come off as an overreach.</li> <li>Same as ATAF.</li> </ul>
BEPS MG	<ul style="list-style-type: none"> <li>Dispute resolution mechanisms need to account for states' sovereignty. Other dispute resolution mechanisms like the ISDS and WTO DSB would not meet this standard. This has recently been addressed by the UN Tax Committee through the adoption of article 25(7) of the UN Model (2025). The protocol is an opportunity to provide for a multilateral implementation of this rule.</li> <li>The scope of DTCs is not sufficient to resolve all disputes, particularly those that fall outside of scope. (scope should include indirect taxes on cross-border transactions).</li> <li>(link to WSI) The UN FCITC should create appropriate forums for Member States to meet and discuss all tax issues;</li> </ul>

	<ul style="list-style-type: none"> <li>Different considerations would arise for possible conflicts of interpretation of the UN FCITC itself. Especially in the case of disputes regarding the substantive rules under the UN Framework Convention (like in the services protocol), the settling of disputes on the interpretation of multilateral rules cannot be left to bilateral negotiations under the cloak of diplomatic confidentiality.</li> <li>The issues surrounding the national judiciary processes are of a national sovereignty nature;</li> </ul>
EFTE	<ul style="list-style-type: none"> <li>Arbitration mechanisms in bilateral investment treaties and the WTO have long proved inappropriate and, considering the sovereign nature of taxation, it should be rendered unacceptable for countries' tax sovereignty to be restricted by international arbitration or adjudication, which would become dominated by MNE tax advisers.</li> </ul>
GATJ	<ul style="list-style-type: none"> <li>The protocol should not address pre-existing tax disputes about individual taxpayers.</li> <li>(link to WS I) the FC should aim to replace the transfer pricing system (including the ALP) with a unitary system with formulary apportionment, supplemented by an ambitious minimum effective corporate tax rate. We note that this has the potential to prevent many of the issues that are currently causing disputes.</li> </ul>
SC	<ul style="list-style-type: none"> <li>The present bilateral Mutual Agreement Procedure (MAP) while helpful is clearly inadequate and can be supplemented by a more robust multilateral mechanism.</li> <li>A panel system consisting exclusively of government officials of the affected countries can be explored, building on the Scope Review Panel and Review Panels as elaborated in Article 25 of the draft Amount A Multilateral Convention.</li> <li>The protocol can provide a treaty-based dispute resolution mechanism for countries who do not have bilateral tax treaties.</li> <li>The protocol can also provide a comprehensive legal framework for the implementation of simultaneous examinations, joint audits and multilateral risk assessments.</li> <li>The protocol should seek commitment from parties that tax disputes should only be resolved via established procedures for settling tax disputes (such as Mutual Agreement Procedure) and not via dispute resolution mechanisms contained in trade or investment agreements.</li> </ul>
TJN	<ul style="list-style-type: none"> <li>As many countries do not have DTCs they do not have access to dispute resolution. This is a problem as TP disputes are always cross-border.</li> <li>Remedy could be the “emancipation of dispute resolution”: the protocol should serve to create a universal legal ground for dispute resolution.</li> <li>Follow the UN MC Art 25 and extend the scope to protocols under the UNFCITC;</li> <li>Optionality: recent studies reveal how the MAAC's reservation possibilities regarding assistance in the collection of taxes and</li> </ul>

	exchange of information beyond income tax have curbed this multilateral convention's usefulness. To avoid this, a dispute resolution ground and procedure to settle disputes regarding the Convention itself and the Protocol should be mandatory. A sub-protocol that makes this mechanism applicable to disputes regarding any type of double taxation may be optional, as for example with the sub-protocol that implements the 'extended clause' of Article 25(7) of the UN Model (2025) which asserts priority of tax dispute resolution fora over ISDS in international investment agreements.
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### 3.3 Issue (c): whether the concept of optionality with respect to mechanisms provided in the protocol is generally acceptable

#### 3.3.1 Approach

Issues Note	
	<ul style="list-style-type: none"> <li>Most countries acknowledged that achieving broad participation may require a level of optionality. If the concept of such optionality by virtue of an opt-in or opt-out to certain mechanisms is acceptable to the INC Plenary, its exact scope with respect to each provision would have to be considered as the protocol is developed.</li> </ul>

MS Inputs	
AG	<ul style="list-style-type: none"> <li>The final protocol should reflect the differentiated capacity of countries and offer scalable and regionally adaptable tools for both prevention and resolution.</li> <li>optionality should not dilute the effectiveness of the protocol. It should be structured clearly, with minimum core commitments, and optional mechanisms available through clear opt-in or opt-out modalities</li> </ul>
BEL	<ul style="list-style-type: none"> <li>Idea of focusing on the development and knowledge sharing of best practices, rather than binding obligations, within the protocol.</li> </ul>
CZE	<ul style="list-style-type: none"> <li>(link to WSI) the wording of the commitment should ascertain that no party to the Framework Convention is obliged to sign the Protocol II.</li> </ul>
FRA	<ul style="list-style-type: none"> <li>the mechanisms provided in the protocol should be optional, by virtue of an <i>opt-in</i> or <i>opt-out</i> clause which will provide more flexibility and ease the articulation of the protocol with other existing instruments;</li> </ul>
DEU	<ul style="list-style-type: none"> <li>Optionality: Not all jurisdictions may be in a position to adopt the full spectrum of mechanisms at the outset. Allowing states to opt in or out of specific mechanisms, as appropriate, as their administrative and legal systems evolve is a pragmatic approach that supports broad participation while preserving national sovereignty.</li> <li>Coordination: Germany supports a pragmatic and inclusive approach to developing the protocol. In our view, mechanisms should be geared primarily toward preventing and resolving international tax disputes, particularly those arising from the application of the Framework</li> </ul>

	Convention and its protocols as well as bilateral or multilateral tax treaties
IDN	<ul style="list-style-type: none"> <li>We fully support the concept of optionality as a pragmatic and inclusive design feature of the protocol. It provides the necessary flexibility for countries with diverse legal systems, administrative capacities, and policy preferences to participate meaningfully in the dispute resolution framework without compromising their legal sovereignty.</li> <li>Optionality, through structured opt-in/opt-out provisions, can also promote broader uptake of the protocol. Nevertheless, the protocol should ensure that such flexibility does not undermine its effectiveness. Clear safeguards, minimum standards, and transparency measures should be incorporated to ensure consistency, fairness, and mutual trust among participating countries.</li> </ul>
MAR	<ul style="list-style-type: none"> <li>Morocco strongly supports the optionality concept as essential for ensuring broad participation while respecting constitutional limitations and varying administrative capacities.</li> <li>Morocco suggests a full opt-out for arbitration.</li> </ul>
NLD	<ul style="list-style-type: none"> <li>Consistency with ongoing work and consensus achieved in international forums (such as the Inclusive Framework on BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes) should guide the discussions in the workstreams, aiming to build on these strengths and engage in effective cooperation to ensure a synergistic approach to global tax challenges.</li> </ul>
NGA	<ul style="list-style-type: none"> <li>to ensure the effectiveness of the Protocol, some minimum level of commitment needs to be incorporated within its design;</li> <li>Thus, a hybrid model that incorporates some minimum standards and flexibility may ensure consensus is achieved;</li> <li>The protocol incorporate opt-in or opt-out clauses for contentious mechanisms (e.g., arbitration, mediation), and a graduated approach that allows countries to enhance their engagement as capacity strengthens over time.</li> </ul>
NOR	<ul style="list-style-type: none"> <li>it seems necessary that the Protocol offers a wide range of options with respect to the mechanisms provided for.</li> </ul>
KOR	<ul style="list-style-type: none"> <li>Reservation allows mechanisms that may be useful to some jurisdictions—despite conflicting with existing obligations or lacking full consensus—to be introduced;</li> </ul>
RUS	<ul style="list-style-type: none"> <li>principle of the "one-stop-shop" for registration and reporting (possibly a portal solution), simultaneous access to the reporting of MNEs (data transmission system used in automatic exchange of information or its analogue).</li> </ul>
SAU	<ul style="list-style-type: none"> <li>(link to WS I) The relationship between the commitment in the FC and the Protocols remains unclear and explicit differentiation of responsibilities is needed.</li> </ul>

	<ul style="list-style-type: none"> <li>The principle of optionality needs to be clearly defined in order to prevent interpretation ambiguity and opting-out of a mechanism should not result in a disadvantage.</li> </ul>
SEN	<ul style="list-style-type: none"> <li>the protocol should, at best, reflect the differentiated capabilities of countries and propose scalable and adaptable tools for both prevention and resolution;</li> <li>Optionality should not weaken the effectiveness of the Protocol. It should indeed be clearly structured, with a minimum of fundamental commitments, and optional mechanisms available through clear modalities for adherence or withdrawal.</li> </ul>
ESP	<ul style="list-style-type: none"> <li>It is essential that the protocol does not conflict with existing mechanisms under bilateral treaties, the Multilateral Instrument on BEPS (MLI), or the EU Tax Dispute Resolution Directive. Complementarity should be a guiding principle.</li> <li>Coordination: such a framework must not result in the creation of a parallel system that operates independently of established international tax norms. A fragmented or duplicative system could undermine legal certainty, create inconsistencies in the interpretation and application of tax rules, and increase the risk of forum shopping or conflicting outcomes.</li> <li>Optionality: provided it is carefully designed to avoid fragmentation and ensure interoperability with other international instruments.</li> </ul>
GBR	<ul style="list-style-type: none"> <li>the discussions at the Intergovernmental Negotiating Committee on the protocol should focus on strengthening and coordinating the existing legal frameworks, addressing gaps and developing new tools where necessary, and ensuring that they function in the most effective, efficient and inclusive manner possible.</li> <li>(link to WS I): We agree that the interaction of the protocol with the dispute resolution provisions of the Framework Convention requires careful coordination with Workstream 1. One possible approach would be for the dispute resolution provisions of the framework convention to apply to disputes between the signatories of the convention, while the dispute resolution protocol could apply to the operative provisions of all protocols and so encompass disputes involving taxpayers. As the dispute resolution protocol is itself optional, it would therefore be necessary for other protocols to also contain dispute resolution protocols, which could either mirror or apply the dispute resolution protocol by reference.</li> <li>Optionality: We recognise the concern that this may create additional complexity for both Member States and taxpayers in terms of understanding which provisions are applicable, but we consider that over time it could lead to greater harmonisation of approach as experience is gained and trust is improved</li> </ul>

Non-MS Inputs	
ATAF	<ul style="list-style-type: none"> <li>Optionality must not dilute the effectiveness of the protocol. It should be structured clearly, with minimum core commitments, and optional mechanisms available through clear opt-in or opt-out modalities</li> </ul>

AU	<ul style="list-style-type: none"> <li>Optionality must not dilute the effectiveness of the protocol. It should be structured clearly, with minimum core commitments, and optional mechanisms available through clear opt-in or opt-out modalities</li> </ul>
BEPS MG	<ul style="list-style-type: none"> <li>With regard to the use of opt-outs and the possibility of expressing reservations in relation to specific mechanisms, caution is due.</li> <li>The experience of BEPS Multilateral Instruments (BEPS-MLI) is not positive.</li> <li>This approach has essentially kept minimum standards bilateral, even if packaged in a multilateral agreement.</li> <li>It is clear that this type of selective multilateralism should be avoided at all costs as it risks fragmenting the policy landscape further under the false guise of multilateralism, rather than forcing countries to take on truly global and inclusive commitments.</li> </ul>
EFTE	<ul style="list-style-type: none"> <li>WS III should prioritize dispute prevention by advocating for simpler international taxation of MNEs and strengthening administrative cooperation—such as automatic information exchange for tax purposes—over adversarial mechanisms.</li> <li>The proposal for an intergovernmental dispute resolution body is impractical. Tax disputes remain inherently sovereign matters, and any protocol must respect optionality while addressing cross-border conflicts.</li> <li>Countries subscribing to the protocol would agree however to an instrument that would be biding once the ratification process is concluded.</li> </ul>
WATAF	<ul style="list-style-type: none"> <li>WATAF agrees with and would appreciate the provisions that mandates data sharing and technology transfer to prevent dispute and trigger relatively equitable resolution</li> <li>West African countries have limited, effective tax treaties network. Hence it is key that the Protocol does not start from the assumption of existence of remedied under DTCS but also cover instances of absence of DTCS.</li> <li>Digital infrastructure could revolutionise dispute resolution and could allow remote collaboration, build shared data systems, and support dispute flagging.</li> <li>The protocol could intentionally and widely propose a Digital Infrastructure Fund (DIF), with the support of developed and developing countries, to ensure inclusive access to modern dispute prevention and resolution systems.</li> </ul>
GATJ	<ul style="list-style-type: none"> <li>Making CBC reporting publicly available (via a central public database) would significantly increase the opportunities for tax administrators to cooperate across borders</li> <li>No support for the idea of “agreeing to disagree”, and the opt-in opt-out idea should be taken off the table.</li> <li>(link to WS I) It is important that the FC includes strong provisions on dispute resolution – not least to avoid that countries opt out by refraining from signing the Protocol.</li> </ul>

IBFD	<ul style="list-style-type: none"> <li>Optionality: the Protocol may consider establishing minimum procedural standards such as timeframes for MAP processes, transparency commitments, or access to early engagement tools. These standards could improve predictability and coherence in dispute resolution practices without compromising sovereignty;</li> <li>A hybrid model that combines flexible optionality with core baseline norms could serve as a model for gradual convergence toward international good practices;</li> </ul>
ICC	<ul style="list-style-type: none"> <li>Need for Clarification on the Relationship with Other Dispute Resolution Mechanisms and the Optionality Element;</li> </ul>
KPMG	<ul style="list-style-type: none"> <li>adopt an evidence-based approach to dispute prevention and resolution recognising the substantial economic and social benefits of reduced tax disputation</li> <li>analysis of the fundamental sources of disputes</li> <li>Economic analysis should be undertaken to quantify the benefits of a significant reduction in taxation disputes</li> <li>A peer review process could be undertaken to assist in the implementation of best practice if desired by the parties.</li> </ul>
PL	<ul style="list-style-type: none"> <li>(1) Suspend domestic litigation deadlines during MAP proceedings</li> <li>(2) A Joint Consultation mechanism that enables taxpayers to obtain binding pre-rulings from competent authorities on treaty interpretation.</li> <li>(3) A centralized transparency platform publishing anonymized Joint Consultation outcomes, MAP decisions, and common treaty interpretations, addressing information asymmetries and promoting consistent application.</li> <li>Comply with UN's Sustainable Development Goal n. 16 (Peace, Justice, and Strong Institutions) by improving the predictability of tax systems (international legal certainty).</li> </ul>
SC	<ul style="list-style-type: none"> <li>Create a public CBCR database as included in the <i>Compromiso de Sevilla</i>, the UN FFD4 Outcome Document, under para 28 (f).</li> <li>The protocol could therefore be based on: Clear opt-in/opt-out structures with built-in alternatives where parties could not agree on a particular option. Core commitments + optional tools.</li> </ul>