

ICC's response to the INC Co-Leads' Draft Issues Notes

Workstream I

Workstream I of INC/Tax is charged with developing the draft text of the UN Framework Convention on International Tax Cooperation.

- *It outlines potential commitments on topics such as fair allocation of taxing rights, dispute prevention and resolution, and support for sustainable development.*
- *The draft emphasizes the need to agree on foundational tax principles to avoid fragmentation and ensure predictability in global tax cooperation.*

ICC General Comments:

- Emphasises the need to **define fundamental tax principles** before drafting commitments or protocols. These include:
 - Tax certainty for stable investment decisions
 - Recognition of taxpayer rights and safeguards
- **Concern:** Current work plan prioritizes drafting commitments without clearly incorporating these principles, risking an unbalanced framework.
- ICC urges the UN to focus on **universal agreement on principles of taxation** to ensure predictability and avoid future negotiation deadlocks.

Workstream I

Specific Comments & Recommendations

The ICC specific comments:

- Support inclusion of tax dispute prevention and resolution mechanisms that are **fair, independent, accessible, and effective**.
- Strongly **recommend taxpayer participation in design and implementation** enhance legitimacy, provide crucial factual and operational clarifications, and ensure solutions reflect real-world business models.
- Caution against opening **broad, undefined debates on “fair allocation of taxing rights”**, as fairness is subjective and risks delaying progress.
- Stress **tax certainty must be explicitly included** as a guiding principle, as it is critical for predictability, investment, and avoiding disputes or double taxation.
- Note any new approach to allocation of taxing rights must be coherent with existing frameworks.
- Propose establishment of a **Technical Business Advisory Council**:
 - 20 business representatives from all UN regions (4 per region)
 - Ensures balanced input from developed and developing countries
 - Chair of INC should hold consultations and publish reports to maintain transparency.

Workstream II

***Workstream II** of INC/Tax is charged with developing the first early protocol, on the “**taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.**”*

It highlights diverging national practices (e.g., gross-basis WHT vs. net-basis taxation), debates over economic nexus and value creation, and the need for future-proof, administrable rules that balance source and residence taxing rights.

ICC General Comments:

- Reiterate the need to **define fundamental tax principles** before drafting commitments or protocols.
- Emphasize that policy should **foster sustainable growth, job creation, and cross-border investment.**
- Express concern over **growing complexity in international tax rules**, particularly proposals for sectoral taxes and **gross-basis withholding taxes (WHT) on services.**

Workstream II

Specific Comments & Recommendations

The ICC specific comments:

- Highlight concerns with sectoral taxes and gross-basis WHT on services:
 - Ignores cost/value of services, reducing investment returns and raising double taxation risks.
 - Increases upfront business costs, deters reinvestment, and raises consumer prices.
 - Disproportionately impacts small companies and startups with thin margins.

Underscore:

- A need for an **economic nexus approach**, ensuring taxing rights are grounded in substantial engagement, not mere revenue collection.
- **Cost-sharing arrangements without mark-up** should be exempted from WHT to avoid unjustified tax burdens.
- **Bilateral tax treaties are essential tools** preventing double taxation and facilitating trade – they are not barriers to taxation.
- WHT rates require **careful bilateral negotiation**, particularly for support services between developing countries, due to varied industry margins.
- Reiterates that **fragmentation and lack of legal certainty threaten the success** of the UN Tax Framework Convention and early protocols.

Workstream III

*Workstream III of INC/Tax is charged with developing the second early protocol, on the “**prevention and resolution of tax disputes.**”*

- *It identifies inefficiencies and inequities in current mechanisms (e.g., limited access to MAP or arbitration), especially for countries with small treaty networks.*
- *Explores tools like cooperative compliance, APAs, mediation, and the possibility of a universal protocol with optional elements to enhance legal certainty, build trust, and reduce litigation risks.*

ICC General Comments:

- Welcome reference to **effective prevention and resolution of tax disputes**, recognising it as essential to enhance cross-border trade, investment, and domestic resource mobilisation.
- Strongly agree on the need for mechanisms that are:
 - **Fair, independent, accessible, and effective**
 - Designed to resolve disputes efficiently **and prevent them from arising** through predictability and clarity.
- Note that **effective prevention reduces administrative burdens** and compliance costs for both taxpayers and tax authorities.

Workstream III

Specific Comments & Recommendations

The ICC specific comments:

Support:

- **Advance legal certainty** through clear rules and early guidance;
- **Cooperative compliance models** building trust between taxpayers and authorities;
- **Advance Pricing Agreements (APAs) and rulings** to prevent disputes before they arise;
- Inclusion of **arbitration, mediation, and ADR tools** as timely, cost-effective alternatives to litigation.
- Underscore the taxpayer's critical role in:
 - Providing factual clarifications
 - Helping resolve disputes efficiently.
- Call for clarity on how **new mechanisms will interact with existing ones** (e.g. Mutual Agreement Procedure, treaty arbitration, domestic remedies).
- Further clarification on **optionality** needed to maximise certainty for taxpayers.
- Reiterate proposal for a **Business Advisory Council** to ensure solutions remain practical and effective in real business contexts.