

ICRICT statement on the UN negotiations for a Framework Convention on International Tax Cooperation and its two early protocols.

Nairobi, 10 November 2025



Executive summary

As the principal source of public revenue, taxation enables governments to mobilize the resources necessary to finance public investment and social programs that are essential for fulfilling human rights and the right to sustainable development. All provisions and commitments in the UN Framework Convention on International Tax Cooperation and its protocols must contribute to resource mobilization in ways that are consistent with the Sustainable Development Goals, the UN Declaration on Human Rights and other international principles and norms. While taxes should be efficient, they also need to be equitable. In a world in which growing inequality has become a major problem, good tax systems must contribute to reducing inequalities both within and between countries. The forthcoming round of negotiations in Nairobi will start shaping the content of the convention and the protocols. This process must result in a departure from international tax rules that have enabled tax avoidance and fostered tax competition between countries, resulting in a race to the bottom.

The framework Convention

Core principles and obligations must be enshrined in the text of the convention itself. These should include:

- The equitable distribution of taxing rights on the profits of multinationals through unitary taxation with formulary/fractional apportionment.
- Curbing the race to the bottom through a 25% global minimum tax on the profits of multinationals.
- Greater tax transparency, through public country-by-country reporting (PCBCR), beneficial ownership transparency, including the commitment to the creation of a global asset register.
- A commitment to progressive taxation, including the effective taxation of high-net-worth individuals (HNWIs) through a global minimum tax on the income and wealth.

The protocol on Cross-Border Services in an Increasingly Digitalized and Globalized Economy

The protocol should provide a menu of options that can be implemented taking into consideration domestic situations and treaty restrictions, that should contain:

- Taxation on gross income such as withholding taxes or/and digital services taxes.
- Taxation on net income on the basis of some form of apportionment, based on objective criteria (e.g. sales, employment).

The protocol on dispute prevention and resolution

A new dispute resolution mechanism can only be effective if the protocol reflects agreement on common legal ground among participating states. We suggest that:

- Common legal ground cannot be found in OECD Transfer Pricing Guidelines and should reflect the commitment to achieve a fair allocation of taxing rights.
- Taking into account concerns regarding sovereignty and possible revenue loss, we oppose the use of mandatory arbitration for dispute resolution.
- The protocol should include tax transparency as a key dispute prevention mechanism, including the introduction of public country by country and beneficial ownership transparency.

What should a UN Framework Convention on International Tax Cooperation deliver?

The convention should include commitments to:

- Equitable taxation of multinational enterprises (MNEs), based on:
 - Fair reallocation of taxing rights between countries, underpinned by the principles of unitary taxation with formulary/fractional apportionment of all profits.
 - The establishment of a new nexus rule. A right to tax exists when there is a purposeful and sustained interaction with the economy of that country, including sales of goods and services by any means, including digital.
 - The principle of significant economic presence, whereby a taxable presence will be created in a country when a non-resident has a significant economic presence; defined as purposeful and sustained interaction with the economy of that country, including sales of goods and services by any means, including digital.
 - The strengthening of anti-avoidance instruments and principles such as a 25% global effective minimum tax on the profits of MNEs, recognizing that globalization has opened up new opportunities for tax avoidance and that the international community so far has done too little to shut down tax havens (whether on shore or offshore).
 - The development of coordinated mechanisms for the taxation of services, including digital services.
 - Public country-by-country reporting of MNEs' economic activities based on the robust Global Reporting Initiative standard for public reporting on tax ([Tax: 207](#)).
- Effective taxation of high-net worth individuals, including common principles and minimum standards for the taxation of the very rich and the super-rich, and anti-avoidance instruments such as a global minimum tax on income and wealth (both flows and stocks). This should include a commitment by all countries to ensure effective taxation of wealth as a complement to taxation of income.
- Transparency and exchange of information for tax purposes. This should include the creation of a [global asset register](#) and global standards for asset registers including beneficial ownership identification (including for trusts which obfuscate beneficial ownership), public data components, and components only to be shared through the automatic exchange of information among tax authorities. Transparency commitments, information sharing and administrative cooperation should also include inter alia:
 - Minimum domestic transparency commitments (e.g. inter-agency sharing of information).
 - Global administrative and judicial cooperation among jurisdictions.
 - Global access to relevant databases.

- Special and differential treatment. In the same way as is the case for trade negotiations, the principle of special and differential treatment should be part of the basis for the negotiation. Without undermining the general coherence of the tax architecture, low- and middle-income countries should be allowed to receive more favorable treatment as well as special rights to address specific constraints.



The Convention and its protocols, as well as the negotiations that would lead to these, should be governed by the same principles and follow the approved [Terms of Reference](#) adopted by the General Assembly.

Based on the above, we propose the following solutions for consideration with respect to Articles 4 and 5 of the convention:

On fair allocation of taxing rights - Current draft (Article 4 of the October 24, 2025 draft)

Fair Allocation of Taxing Rights: The States Parties agree that every jurisdiction where a taxpayer conducts business activities, including jurisdictions where value is created, markets are located and revenues are generated, have a right to tax the income generated from such business activities.

Our proposed solution – a transition to unitary taxation with formulary/fractional apportionment

With reference to the ToR para 10(a) and 10(e), introduce an Article in which Parties to the Convention decide to transition to unitary taxation with formulary/fractional apportionment, supplemented by an ambitious minimum effective corporate tax rate. While the Convention should contain the overall decision, mandate and timeline, the specific rules to operationalize the decision can be developed by the future Conference of the Parties (COP). This includes the specific formula

for allocating taxing rights, which should be informed by public country by country reporting and agreed with a clause subjecting it to regular reviews.

On the taxation of High-Net-Worth Individuals (HNWIs) - Current draft (Article 5 of the October 24, 2025 draft)

1. In order to prevent high net worth individuals from avoiding or evading taxes, the States Parties agree to adopt measures to detect and thwart such activities, including through expanding exchange of information to additional types of assets and instruments as such exchange becomes feasible. 2. The States Parties agree to share information regarding structures and techniques used by high-net worth individuals to avoid and evade taxes and to require appropriate disclosures of such structures and techniques by taxpayers, advisors and intermediaries involved in developing them. 3. The States Parties agree to adopt coordinated approaches to ensuring effective taxation of high-net worth individuals.

Our proposed solution – a comprehensive approach

The Convention must outline a process to identify HNWIs, both within countries (based on nationally specific thresholds), and at the global level. The Global Asset Register (see below) will be essential in this context, including by identifying the true – beneficial – owners of assets. Furthermore, in

accordance with 10(b) of the ToR, the Convention must operationalize the commitment to ensure “effective taxation” of HNWIs, including both approaches to be coordinated between Member States as well as international components, including a minimum tax. The approach to taxing HNWIs should ultimately be anchored in the objective of establishing an “international tax system for sustainable development” (ToR para 7(c)), which includes tackling inequalities within and between countries, addressing ecological debt, and mobilizing financing for pressing environmental and social needs. For the world’s wealthiest HNWIs, it should be recognized that some of their existing wealth stocks originated outside their country of residence, and the taxing rights to such wealth must include an international component, anchored in the objective of reducing inequalities and promoting sustainable development.

What should a Protocol on Cross-Border Services in an Increasingly Digitalized and Globalized Economy deliver?

The taxation of cross-border services poses challenges that go to the heart of the prevailing orthodoxy on international tax rules. Countries have generally taxed income from services based on the place where they are performed, but digitalization has enabled services providers to be physically distant from and yet closely linked with their customers. Hence, there are valid claims to tax based on both the location of the services provider and that of the customer or user. This requires a new approach to the allocation of rights to tax the net income. This, in turn, requires the re-examination of a long-standing principle, related to the nexus for taxable presence. A right to tax exists when there is a purposeful and sustained interaction with the economy of that country, including sales of goods and services by any means, including digital.

Services that are deliverable digitally now comprise some 56% of [cross border services](#). Attention has been focused on highly digitalized

activities that generate extraordinary profits, but it should be noted that these comprise only a small share (some 13%) of cross-border services; an additional 22% can also be categorized as automated digital services (such as online advertising services, search engines and social media platforms), and the wide range of technical and professional services that are also digitally deliverable amount to some 25% of cross-border services. In our view, the Protocol should aim for a wide scope to cover an extensive range of all services.

The initial work done in Workstream 2 has identified that two approaches are possible: allowing an appropriate level of taxation at source of gross revenues, or a taxation of a share of net income based on revenue from sales. The work on this Protocol is still ongoing.

In our view, there is no one size fit all solution. The protocol should provide a menu of options that can be implemented taking into consideration domestic situations and treaty restrictions. The menu of options should at the very least contain:

- Taxation on gross income such as withholding taxes or/and digital services taxes.
- Taxation on net income on the basis of some form of apportionment (formulary/fractional).

Gross income withholding taxes have significant practical advantages and may seem easier to implement for developing countries. Moreover, they are less subject to manipulation (profit shifting) than systems based on net income. It is strongly recommended that countries and regions continue to introduce such taxes, such as digital service taxes, in the absence of a multilateral solution. The protocol can provide a standardized approach to such gross based taxes on all services.

However, in our view the eventual aim should be some method for sharing the rights to tax income or profits based on some form of apportionment (formulary/fractional). Given that both parties to the transaction are necessary for the completion

of a service (i.e. the service provider and the recipient of the service), in the absence of well-defined competitive prices for the service being provided, a 50/50 allocation might be appropriate; but when a competitive price can be defined for the service, any charge in excess of the competitive price should be deemed a profit, earned in the country of the recipient of the service.

What should the protocol on dispute prevention and resolution deliver?

A new common legal ground that reflects a fair allocation of taxing rights

It is clear that a universal dispute resolution mechanism is much needed, and such a mechanism can only be effective if the protocol reflects agreement on common legal ground among participating states. One of the key drivers of international tax disputes is the use of the arm's length principle and transfer pricing as the basis upon which the taxable profits of multinational enterprises are determined. This common ground cannot be found in the OECD Transfer Pricing Guidelines, which even OECD member countries do not uniformly support. Rather, the common legal ground should be identified in the objectives, principles and commitments of the Convention itself: not least, in the commitment to achieve a fair allocation of taxing rights.

It is likely to take some time to develop a common legal ground that reflects a fair allocation of taxing rights. In the meantime, taxpayers' ability to challenge tax authorities' allocation of taxing rights should be restricted to the cases in which the tax authorities' allocation is deemed unreasonable (e.g. in cases where the tax authorities' adjustment is more than 50% higher than the taxpayer's own determination).

Transparency as key dispute prevention mechanism

Dispute prevention can be further advanced with administrative cooperation and transparency through two key measures:

- Public country by country reporting: a fair allocation of taxing rights in relation to business activity and dispute prevention can be facilitated with the global implementation of public country by country reporting of MNEs' economic activities based on the robust Global Reporting Initiative standard for public reporting on tax ([Tax: 207](#)). Public country by country should therefore be seen as key dispute resolution prevention measure, with a centralized registry that should be accessible to tax authorities and the general public.
- Transparency of beneficial ownership. Public information on legal and beneficial ownership can serve as a dispute prevention mechanism, both to address harmful tax practices and ensure the taxation of high-net-worth individuals. This must include a commitment to the creation of a [global asset register](#) and global standards for asset registers including beneficial ownership identification (also for trusts which obfuscate beneficial ownership), with public data components and components to be shared through the automatic exchange of information among tax authorities.

Signatories to the protocol on cross border disputes must therefore also commit to the introduction of the above transparency measures, ideally through the main convention text but with the potential for additional measures within this protocol.

Opposition to mandatory arbitration

There is a growing consensus in both developed and developing countries against arbitration due to the associated costs, potential loss in revenues, a lack of confidence in the impartiality of the arbitrators and constitutional/sovereignty concerns. For such reasons, as a Commission we oppose the use of mandatory arbitration.

Furthermore, we support the call by the African Group of countries that the protocol should seek commitment from parties that tax disputes should only be resolved through established procedure for certain tax disputes and not through trade dispute resolution mechanisms.