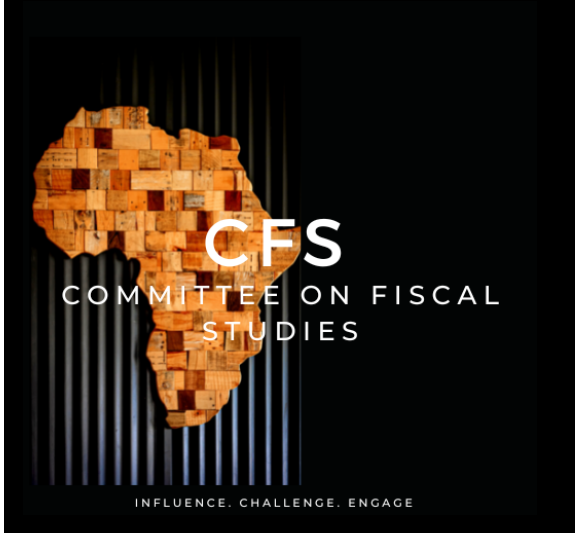

CFS BRIEFING No. 05/2025 (August)

UN TAX NEGOTIATIONS: WORKSTREAM II (CROSS BORDER SERVICES)

Between 11-15 August 2025 begins the second formal session dedicated to the taxation of cross-border services. This session is situated within a broader negotiation process on a Framework Convention on International Tax Cooperation, where Member States are tasked with designing protocols that can modernise international tax rules and make them fit for a globalised and digitalised economy.

Questions raised

The central question for Workstream II is how to ensure that **market jurisdictions: where services are consumed, have the right to tax**, even in the absence of a physical presence by the service provider. Existing treaty rules, which are largely anchored in the permanent establishment concept, were designed for an era when most services were delivered on-site. Today, technological advances enable businesses to provide a wide range of services remotely, meaning that value can be generated from a jurisdiction without any local employees, offices, or tangible assets. Throughout the session on 11 August 2025, Member States have expressed both converging and diverging views on the way forward.

- Developing countries, particularly from Africa and Asia

They argued strongly for the inclusion of **simple and enforceable** rules that will allow them to capture revenue from services consumed in their markets. Many of these countries already operate **gross-basis withholding systems** domestically, which enable them to tax payments leaving their jurisdiction regardless of where the service provider is located. Delegates emphasised that such systems are effective tools for resource mobilisation, but they also recognised the risk of over-taxation if rates are not aligned with realistic profit margins.

- Other delegations, including those aligned with the business community

They underlined the importance **of tax certainty**, **avoidance of double taxation, and close alignment with modern treaty practices**. They cautioned against measures that might discourage cross-border trade and investment, and called for **capacity-building** measures and **clear dispute prevention mechanisms** to reduce costly and protracted tax controversies.

Across the board, there was acknowledgment that any rules adopted must be “future-proof” capable of remaining relevant as technology, business models, and service delivery methods continue to evolve.

The WS-II co-leads’ presentation provided a structured framing of the issues at stake. They identified **key barriers** to taxing cross-border services, including **legal provisions** in existing

tax treaties that no longer match current commercial practices, the **misalignment between treaty-based physical presence tests** and the **gross-basis systems** used in many developing countries, and the **rapid advances in digital technology** that have made remote service delivery both easier and more common. They illustrated these challenges through practical examples: intra-company specialist services provided with minimal in-country presence; professional services delivered both on-site and remotely; and digital platforms that monetise advertising and user data from markets where they have no physical footprint. The co-leads emphasised that the primary goal of any new rules should be to support domestic resource mobilisation through a fair allocation of tax revenues. This core objective is supported by three further aims: **eliminating barriers to cross-border trade and investment; ensuring economic efficiency and tax neutrality; and achieving simplicity and administrability**. They then posed a set of fundamental design questions that will determine the architecture of the protocol:

1. Should there be new nexus rules for services?
2. What continued role, if any, should physical presence play?
3. Should taxation be on a net basis, gross basis, or a combination of both?
4. Should different types of services be subject to different rules?
5. And finally, which taxes should be covered by the protocol?

Why these questions are important

These questions are critical because they go to the heart of balancing taxing rights between source and residence jurisdictions. The nexus question determines whether market jurisdictions can tax at all. The role of physical presence will decide whether the existing permanent establishment concept remains central or is supplemented or replaced by a significant economic presence test. The choice between net and gross basis taxation will influence both fairness and administrability, with gross offering simplicity but risking over-taxation, and net providing greater equity but demanding more administrative capacity. Whether to differentiate rules by service type will affect complexity, precision, and the ease of enforcement. Finally, defining the taxes covered will have major implications for the coherence of domestic and international tax systems, and for the relationship between direct and indirect taxes on services. The interventions from Member States and the framing from the co-leads show that there is a shared understanding that the current rules are no longer adequate, but also that the path forward will require careful balancing of competing priorities. For developing countries, the key test will be whether the protocol enables them to secure a fair share of tax from economic activity in their markets. For business and investment-oriented states, the test will be whether the rules provide stability, predictability, and minimal barriers to trade. The challenge for the negotiators is to reconcile these positions into a coherent, future-proof framework that reflects the realities of modern commerce while supporting inclusive and sustainable economic growth.

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