Written comments Kingdom of the Netherlands
20 July 2026 Co-Lead's draft of Protocol I to the Framework Convention

Abstract

This written submission contains the comments from the Kingdom of the Netherlands on the 20 July 2026 Co-Lead 's Draft Protocol on the Taxation of Income from Cross-Border Services. In the first paragraph we thank the Chair, Co-lead of workstream II and the secretariat for the work done to facilitate the discussions and for publishing a revised Draft Protocol and include some general remarks. Following our general remarks, we include some comments on the process and several substantive comments and suggestions.

General Remarks

The Netherlands would like to thank the Chair, the Secretariat and the Co-Lead for all the work carried out to date in relation to this protocol and for the opportunity to provide written input. We would like to underline the importance of ensuring that the positions, views and concerns of all member states are heard and reflected, in particular where the same issues are raised by a substantial part of the membership.

Process

As a reflection on the process, we experienced a lot of confusion in the intersessional and plenary meetings on this draft, which in our opinion originates in the fact that it is unclear how the protocol would function within the wider FC context and how it would interact with existing and future DTA's. Uncertainty on how exactly the protocol will impact our tax treaty network makes it difficult to comment on the draft text. Therefore, these comments should not be taken as our final comments and are subject to change as the texts of the FC and the protocol evolve.

Substantive comments

The Netherlands has significant concerns with the current draft of this protocol and cannot support the direction reflected in its provisions which focus on gross basis withholding taxation through provisions mirroring articles 12AA, 12B and 12C of the 2025 UN model due to the impact on cross-border trade and investment.

In our view, the protocol should be grounded in a membership-wide shared understanding of the issues it is intended to address. It should prioritize solutions that promise to receive broad support. Discussions within the INC so far indicate emerging consensus that current international tax cooperation is insufficiently adapted to certain fully digital business models. We see the first early protocol as an opportunity to analyse the issues posed by these specific business models and develop principles and build on and enhance existing principles for the allocation of taxing rights (nexus and attribution of profits) with a view to avoiding double taxation, promoting trade and investment, ensuring economic efficiency and tax certainty.

The Netherlands takes seriously the call to coordinate on international tax issues arising from digitalization and globalization, and is committed to contributing to a consistent approach. We emphasize respect for existing widely accepted principles and the need to consider net income from goods as well as services.

In our view, economic transactions include the exchange of goods and services. We see no justification why payments for "services" should be taxed differently from payments for goods. In this regard, it should also be noted that the price of goods largely consists of remuneration for the provision of underlying services.

In our view, the argument that payments for services can be viewed as base-eroding payments is not a logical argument in favour of genuine services. A company is interested in making a profit. To do this, the company buys goods and services. In other words, services are purchased for the benefit of the company. In the case of services provided in a multinational, the tax authorities may require that taxpayer to clearly explain why the service was for the benefit of the company (the so-called "benefit test"). However, if artificial payments are made, the tax authorities can and should correct this. This is possible under current transfer pricing rules.

If the service is genuine, it should – in our view – be taxed solely in the country where the service is rendered, since all the activities related to these services also take place in that country. Again, this is similar to a situation where goods are shipped abroad. In that case the payment for these goods is also solely taxed in the country where the goods are produced.

The Netherlands is not an advocate of 12AA/12B/12C UN Model-like provision and does not tax fees paid for services as the state of source. These clauses in the UN Model Double Taxation Convention does not restrict the state of source's taxing right in accordance with the place where the services in question were provided. This means that the state of source is still permitted to tax the fees paid for the services, even if there is only a tenuous link between the state of source and the services provided. Another problem with a state of source taxation of fees for services is that the tax base may not be large enough to permit an offset. This is because the state of source taxes the gross income, whereas the tax offset is based on the net income. As a result, any state of source tax that cannot be offset is likely to be passed on to the entity receiving the services, thus creating an obstacle to foreign investment. Finally, many other, similar (i.e. Western European) countries also do not include a state of source tax on fees for technical services in their tax treaties with developing countries. For this reason, the inclusion of this type of tax could cause disproportionate harm to the interests of Dutch taxpayers.

In light of the above considerations, the Netherlands encourages developing solutions based on the permanent establishment concept, and call for exploration of how this concept may be adapted for digital business models and to explore principles anchored in the arm's length principle for attribution of profits to such permanent establishments. The protocol could for instance reflect article 5(3)(b) of the 2025 UN Model and potentially be extended to a certain digital presence, where users of or participants in digital services contribute value to the enterprise.

Using the familiar concept of the permanent establishment definition over the concept of gross withholding taxation could secure broader acceptance. The permanent establishment concept is widely accepted, covers both services and goods and income is taxed on a net basis.

We do not see broad agreement emerging on the concept of gross-withholding taxation as laid down in provisions like articles 12AA, 12B and 12C of the 2025 UN model, and strongly prefer not to further pursue these provisions. The Netherlands will not be able to make any commitments in a multilateral context on gross withholding taxation as a multilateral solution.

For the Netherlands, bilateral tax treaties represent carefully balanced outcomes considering all interests between contracting parties. It would not be possible for us to agree to amend or override bilateral tax treaties affecting the allocation of taxing rights without reconsidering the overall balance of each individual bilateral tax treaty.

Should these provisions remain in the draft, to increase potential participation in the protocol, we encourage:

- Making the substantive provisions of this protocol optional, to avoid excluding jurisdictions that could support some but not all of the provisions included. Jurisdictions should be able to determine, per treaty partner, which choices preserve the delicate balance of their bilateral tax treaty relationship. As currently drafted, we see a substantial risk that a large part of the UN membership may never sign this Protocol, though some could be willing to support certain concepts reflected in it.
- Setting withholding rates at a low level, thereby sharing the taxing rights over the net profits. This could also potentially mitigate the significant risk of overtaxation. The Netherlands would not grant a credit for tax exceeding what would have been levied under our domestic law on the income. If the rate is set too high, profit margins could be eradicated leaving no basis for a (sufficient) credit. This issue is compounded by the wide range of profit margins across different business sectors.
- Ensuring that multiple nexus indicators cannot apply to the same income simultaneously, to avoid double or multiple taxation. To maintain neutrality, strong guardrails such as a hierarchy or tiebreaker mechanism (with appropriate materiality thresholds to exclude minimal or incidental activity) must be included.
- Including a clearly defined net option(as currently found in art. 12B(3) of the UN Model). We would similarly encourage to add an option to support this provision including the

requirement the service is provided in the source state or the state of which the payor is a resident, which may be elected for certain treaties upon mutual agreement.

Where no DTA is in place, we question the feasibility of this protocol being accepted between jurisdictions but are open to any suggestions regarding implementation.

Finally, regarding process, we were surprised when the draft of the first protocol prior to the August session of the INC was published. During the intersessional work, discussions were difficult and demonstrated again division among the membership on appropriate solutions. Nonetheless, we believed during the last intersessional meetings the secretariat and the co-lead produced a proposal that could have formed a good basis for the plenary discussions. In our view, this draft had the potential to garner wider membership support for key principles without imposing specific and concrete obligations on signatories to amend domestic law or international agreements. Unfortunately, that draft, which made a genuine attempt to reflect a broader range of member states perspectives, was disregarded. We encourage the secretariat and the co-lead to continue the efforts made during these intersessional meetings and to work towards reflecting positions, views and concerns of as many member states as possible.