Global Tax Policy
Alert

UN tax negotiations move from concepts to treaty text

19 August 2026

In brief

What happened?

The UN Intergovernmental Negotiating Committee completed its fifth substantive negotiating session (INC-5) on 13 August 2026. For the first time, delegates negotiated from complete drafts of the Framework Convention on International Tax Cooperation and two early protocols on cross-border services taxation and dispute prevention and resolution. Major differences remain over taxing rights, the treatment of existing tax treaties, and how much flexibility countries should have when joining the protocols. Revised drafts are expected ahead of the next negotiating session in Nairobi beginning 30 November.

Why is it relevant?

The negotiations have moved from broad concepts to treaty language that could materially affect cross-border taxation. The services protocol would expand source-country taxing rights over cross-border services, including automated digital services, without necessarily requiring physical presence. Developing countries also are seeking express coverage of AI-related services. More broadly, the negotiations raise a fundamental question over whether the UN framework should supplement existing international tax arrangements or provide a means of changing outcomes that some countries consider inadequate. The answer could affect existing treaty networks, the allocation of taxing rights, and the risk of overlapping taxation.

Actions to consider

Businesses should stay informed, consider participating in the current consultation process, and seek other opportunities to engage and provide input on the impact of the proposed changes.

In detail

Framework Convention: taxing rights and existing treaties

INC-5 clarified the divide over the Convention's intended role. Many European and other developed countries favor a high-level instrument that complements existing treaties and standards and preserves legal certainty. The African Group (representing the 54 member states of the African Union) and several other developing countries generally seek a more substantive instrument that shifts outcomes toward greater source- and market-country taxing rights.

That divide is clearest in Articles 5 and 21. Article 5 on fair allocation of taxing rights refers to value creation, markets, revenues, users, and data, and contemplates taxation without necessarily requiring physical presence. Developing countries sought stronger source- and market-country rights, while many developed countries warned that undefined or overlapping nexus factors could permit multiple claims without clear allocation rules or adequate double-tax relief.

Article 21 preserves existing treaty rights but would require 'progressive and meaningful steps' toward aligning international tax agreements with the Convention, including renegotiation where necessary. Many European and other developed countries opposed an obligation to revisit existing treaties; the African Group, India, and others argued that leaving them largely untouched would limit the Convention's practical effect.

Observation: These debates increasingly reflect disagreement over the Convention's intended role. Many countries want the UN framework to complement the existing international tax architecture; others want it to provide a mechanism for changing rules and treaty outcomes they consider historically unbalanced. That question is likely to remain central to whether the Convention attracts broad participation.

Protocol I: cross-border services and digital taxation

Protocol I would establish source-country taxing rights over fees for services, automated digital services, and insurance premiums, generally on a gross basis subject to rate caps still under negotiation, with routes to net-basis taxation. Optionality remains the main fault line. Many European and other developed countries want reservations or the ability to determine which treaty relationships the protocol modifies. China also supports flexibility, citing negotiated treaty balances. The African Group, India, and several other developing countries oppose broad optionality, arguing that core rules should apply consistently once a country joins.

Nexus, sourcing, and the tax base also remain contentious. Depending on the provision, source taxation could arise by reference to physical performance, consumer or payer residence, deductibility, end users or user data. Several countries warned that these tests could allow more than one jurisdiction to tax the same payment and called for clearer ordering or a 'one source' rule. Gross-basis taxation presents a related concern. Developing countries generally emphasized their administrative simplicity, while many developed countries and business representatives argued that taxation of gross receipts without regard to costs could produce excessive taxation, particularly for low-margin businesses. The treatment of

Digital Services Taxes (DSTs) also remains unresolved, including how the protocol would coordinate taxing rights and relief where DSTs are treated as indirect taxes. Developing countries also sought express coverage of AI-related services within the automated digital services rules to keep the protocol responsive to evolving business models.

Observation: Protocol I could significantly expand source taxation of digital and remote services. Business impact would depend on rate caps, overlapping nexus claims, access to net-basis taxation, double-tax relief, and interaction with existing treaties.

Protocol II: dispute prevention and resolution

Protocol II produced greater convergence, particularly around mutual agreement procedure (MAP) as the principal dispute-resolution mechanism, with support for flexibility over APAs, mediation, conciliation, and arbitration.

A potentially more consequential issue concerns the protocol's relationship with existing dispute mechanisms. The draft contains two alternatives. Under Alternative A, a substantially similar mechanism in an existing treaty or regional agreement generally would continue to apply unless the countries agree otherwise. Under Alternative B, the UN protocol generally would supersede the existing mechanism unless the parties agree otherwise. Most European countries, Japan, Singapore, and the United Arab Emirates favored Alternative A; China also opposed automatic displacement, while the African Group favored Alternative B, citing historical imbalances.

Observation: The Alternative A/B debate mirrors the Article 21 discussion in the Framework Convention. It again asks whether the UN process should supplement existing arrangements or displace them where countries consider those arrangements inadequate. Thus, this issue could be a key factor in determining whether countries ultimately participate in Protocol II.

What happens next?

Written comments are due 24 August on Protocol II, 26 August on Protocol I, and 28 August on the Framework Convention. Revised drafts are expected ahead of the sixth negotiating session in Nairobi, beginning 30 November.

Conclusion

INC-5 provided the clearest indication yet of how the UN process could affect source-country taxing rights, cross-border services, existing treaty networks, and dispute resolution. Significant differences remain, and the forthcoming written comments should help show where countries are drawing their red lines ahead of revised drafts for Nairobi. The United States remains outside the process after withdrawing in February 2025 and stating that it intends to reject and oppose the Convention's outcomes. Its absence could limit the Convention's future effectiveness, particularly if the final text departs materially from existing international tax arrangements. Even so, the UN work could still influence domestic rules, future treaty negotiations, and the broader direction of source-country taxation.

Let’s talk

For a deeper discussion on the potential impact of these developments on your business, please contact:

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