**ICC Taxation Commission Comments regarding CRP.40 Workstreams B and C**

**General Comments:**

 ICC members would like to express their appreciation to the UN Tax Committee of Experts for deciding to include the topic of tax challenges arising from cross-border teleworking in their current mandate. Indeed, diverse employee populations are seeking clarity on the tax implications of employees working abroad, many of whom have family in, or otherwise wish to work remotely from, developing countries on a temporary basis. We believe that providing more certainty for working abroad and teleworking could bring several economic benefits to developing countries while addressing the obstacles that companies are increasingly facing when trying to respond to the needs of their employees.

We welcome the committee members' acknowledgment of the importance of this issue and commend them for the incredible efforts undertaken in the past months.

In the spirit of constructive and open dialogue and engagement with the Committee, ICC members would like to raise some concerns regarding the proposed solutions under workstream B and C.

Overall, ICC members have reservations about whether the proposed Workstreams B & C will risk discouraging cross border investment, employment and ultimately economic growth.

**Preliminary Comments regarding Annex Three - Workstream B- Services Profits.**

Paragraph 3.2.1 states: “The fundamental goals of the proposal to combine Articles 5(3)(b), 12A, and 14 are to simplify the provisions of the United Nations Model Convention dealing with business services and to expand source country taxing rights with respect to such income.” Paragraph 3.4.1 notes that: “In general, draft Article xx has the effect of extending a country’s right to tax to almost all cross-border services without any requirement for the services to be performed in the country.”

This would be a significant departure from the current model, and ICC member agree with Paragraph 3.4.26 which clearly states:

“If Articles 5(3)(b), Article 12A, and Article 14 are deleted from the United Nations Model Convention and replaced by new Article xx, several consequential amendments to the other provisions of the Model Convention would be necessary. For Example, Article 5(3)(a) would become Article 5(3) and all the references to “fixed base” would be eliminated. In addition, many changes to the Commentary would be required. At this stage, it is premature to make a complete list of the necessary consequential amendments to the Model Convention and the Commentary.”

ICC members are concerned that extending a country’s taxing rights to tax almost all cross border services without any requirement for the services to be performed in a country or even potentially reducing the 183-day rule to zero, 90, or 120 days, risks discouraging businesses from allowing employees to spend any time in a country (including exploring investment opportunities) unless there is already a PE in that country. Workstream B represents a fundamental shift from the location of service consumption to performance, and such a change in taxing rights would pose challenges for both service providers and service recipients who sign global services contracts. This model introduces complexity in cases with single contracts and dispersed resources and consumers – questions arise about who should withhold, how to withhold, and how to allocate income.

 ICC member are also concerned with the business reaction to a proposed approach to revise the threshold requirement by considering both the number of employees and other personnel working in a country, along with the number of days each one works in the country, which appears complicated (as also recognized by the author). We would like to emphasize that such an approach will increase compliance challenges for businesses, especially for multinational enterprises with a large employee base that cannot have full oversight of each employee's location and movements.

**Preliminary Comments regarding Annex Four - Workstream C – Taxation of Non-resident Remote Working Employees of Resident Employers**

Paragraph 3.4 provides:

“[t]he current version of Article 15 of the United Nations Model Convention prevents a contracting state from taxing the employment income of a resident of the other contracting state (irrespective of where the employer is resident), except to the extent that the employment is exercised in the first state. As a result, Article 15 must be amended to allow a contracting state in which an employer is resident to impose tax on the employment income of an employee resident and working in the other contracting state or in a third state in order to give the sate where the employer is resident a right to tax the employee’s income.”

It is unclear to ICC members how creating a new taxing right for a contracting state of an employer to impose tax on the employment income of an employee resident and working in another contracting sate (and to provide a foreign tax credit) will facilitate cross border investment, jobs and ultimately economic growth, and. ICC members are concerned this proposal will entail a significant amount of additional compliance and administrative work, which seems to be a complex solution for a problem that could be addressed more straightforwardly.

It is also unclear how reducing the 183-day threshold to something lower, coupled with the lack of uniformity across all payroll taxes, is likely to improve the current situation.

Both of these proposals introduce significant tracking, system implementations, registrations, credits (Workstream C), withholding (e.g., sec. 3.34 page 114), and remittances.

ICC members have reservations about whether the suggested approaches will ultimately discourage travel and consequent investment, even if a nominal/de minimis rule were to apply. Individuals could resist travel due to increased complexity (e.g., compliance and new foreign tax credit regimes) and potentially an overall higher tax rate. Moreover, countries with large population bases could intentionally limit travel to particular jurisdictions, or there could be a broader government or treaty-level response.

**A Possible Path Forward**

We completely agree on the importance of having a clearer framework and rules to enable employees to work remotely. As demonstrated by our survey results, there are many reasons why employees would like to work cross-border, many of which pertain to their well-being and are associated with Sustainable Development Goals (SDGs) 3 (good health and well-being) and 8 (decent work and economic growth).

However, as previously submitted for consideration to the subcommittee members, we would recommend, as a first step, the adoption of a much simpler solution that could already benefit employees, employers, and countries alike. A possible "safe harbor," a regulatory framework allowing a certain number of days in a foreign country (e.g., 60) without triggering any tax obligations, duties, levies, payroll, social security or related wage withholding, or reporting requirements, should be considered. This suggested safe harbor of 60 days in a jurisdiction without triggering tax or payroll/social security obligations would be a welcome improvement to encourage work and related economic activity in other countries, provide flexibility to employees, and ensure greater certainty for the benefit of countries, employees, and employers.

We hope the committee members can further consider this proposed solution, and we are at their full disposal to answer any questions or doubts to constructively support the work and the successful outcome of this workstream.