ICC Taxation Commission Comments regarding CRP.40 Workstream C

ICC members welcome the opportunity to present written comments with regards to 'Workstream C' under the United Nations ('UN') digitalized and globalized economy subcommittee ('Subcommittee'), regarding the taxation of nonresident remote working employees of resident employers under the provisions of the UN model convention.

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.

However, 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 C.

Indeed, ICC members have strong concerns that the proposed Workstreams C will risk discouraging cross border investment, employment and ultimately economic growth.

Comments on the proposed amendment to Article 15 of the UN Model Convention

- According to the report that was released at the 27th session of the UN Tax Committee of Experts, the Subcommittee has proposed to amend Article 15 of the UN model convention which currently prevents a contracting state from taxing the employment income of a resident of the other contract state, except to the extent that the employment is exercised in the first state.

- We note that the proposed amendment is to allow the contracting state in which the employer is resident to tax the employment income that is paid to the nonresident employee and deductible by the employer, irrespective of whether the employment is exercised in the other contracting state, with a credit available for any double taxation charged. Put simply, the proposal grants an additional taxing right to the employer state (with a credit mechanism for any double tax), with no change to the taxing right of the state i where the employment is located.

- ICC members would like to share their deep concerns in relation to the proposed changes as set out in Annex 4 of the Subcommittee's paper dated 17-20 October 2023 in relation to Workstream C.

- Annex 4 notes that the Subcommittee decided that the treatment of employees resident in one contracting state and working remotely for an employer resident in the other contracting state was 'the most important issue to take forward' at this stage. However, we question how this conclusion was reached and why it is considered a priority, particularly at a time when there is vast change in the international tax landscape for businesses.

- We do not see the majority of our business members raising this as an issue for permanent/long term remote workers, mainly because multinational businesses generally require a local country entity to employ the individual in the state that the individual is resident/performing their services. In particular, we are aware that the business community has taken a number of surveys and **generally have major concerns with arrangements that are short term in nature** (i.e., workers that are working remotely for a limited amount of time), in particular due to compliance challenges.

- In fact, we believe fully remote working is much less of a pressing issue for businesses now that we are in a return to office phase post-Covid. According to this KPMG survey, "a majority (64 percent) *[of Global CEOs]* anticipat*[e]* a full return to office is only three years away. This remains consistent with their *[Global CEOs]* views in the 2022 CEO Outlook. What's more, 87 percent of CEOs say they are likely to reward employees who make an effort to come into the office with favorable assignments, raises or promotions."

- We therefore question why it is considered necessary to adopt changes to Article 15, which only provides a potential solution for a more permanent scenario that we are not looking to address, further complicating the taxation of employment income (e.g., through introducing a credit mechanism where one is not currently required). **Matching the employer deduction for the salaries/wages paid to the taxing right of the employment income does not seem to be a compelling reason to make this change, particularly as it will only have practical effects in instances where the income tax paid in the state of residence of the individual is lower than the income tax paid in the employer state.**

- We are also not aware that businesses nor tax authorities have raised concerns regarding the potential mismatch between the state in which the deduction is claimed for the salaries/wages and the state in which income tax is paid on those salaries/wages.

- The proposed change to Article 15 would also require **changes to domestic law, as well as double tax treaties, creating further complexity.** For instance, businesses would need to track which countries of relevance have made the domestic law changes, how these changes have been made, and what impact this has for the respective business. .

- Furthermore, the withholding tax mechanism to collect the tax **would place present an additional burden for businesses that may need to withhold under multiple jurisdictions' tax laws, and would be required to track employee locations for a variety of reasons that may not currently be required**. The additional burden is recognized by the Subcommittee in the paragraph below,

  '*…the employer should have access to all the necessary information to adjust the amount of the withholding tax to ensure both that the taxes imposed on the employee's employment income are effectively collected and that the employee is not subject to unreasonably excessive withhold. This assumes, of course, that the countries' domestic tax laws allow the employer (and the employee where the employee is required to pay instalments of tax) to adjust the amount of withholding to reflect amounts withheld on account of the other country's tax liability*.'

- 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 state (and to provide a foreign tax credit) will facilitate cross border investment, jobs and ultimately economic growth. ICC members are concerned that 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.

- Creating further complexity for businesses, especially where multiple jurisdictions are involved with differing local tax laws, seems **overly cumbersome, particularly without a compelling justification to make the change.**

- ICC members have reservations about the suggested approaches that may subsequently **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.

- We also note that the above points have also been raised by committee members during UN meetings that took place in October.

A Possible Path Forward

We completely agree on the importance of having a clearer framework and rules to enable employees to work remotely. However, for the majority of our members, priority should be given to addressing **short-term teleworking, that allows an employee** to work remotely from a country different from the one of employment, only for a limited amount of time. As demonstrated by our survey results, there are many reasons why employees would like to work cross-border, many of which pertain to their personal and family 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 we had 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 respectfully hope that the committee members will reconsider our proposed solution.

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