

For the kind attention of:

Mr Ramy M. Youssef, Chair of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols (INC) and Ms Liselott Kana, Co-Lead of Workstream II

27 February 2026

Subject: Joint civil society and trade unions submission regarding Workstream II (Taxation of Services)

Abstract

Please find below a joint submission on behalf of the Global Alliance for Tax Justice (GATJ) and 123 organizations and trade unions. GATJ is a Southern-led global coalition in the tax justice movement and facilitates the coordination of joint-submissions together with its members, Tax Justice Network Africa (TJNA) and the European Network on Debt and Development (Eurodad). This submission summarises our positions on various issues within workstream II including: addressing outdated nexus rules, particularly the physical presence test, addressing profit allocation rules, the implementation of the Protocol and the need to ensure that the provisions of Protocol 1 do not contradict the provisions of the Framework Convention.

On methods of taxation, we strongly propose that unitary taxation with formulary or fractional apportionment is the best method of addressing not only the nexus challenges but also the profit allocation challenges of taxation of cross-border services. We further propose that this approach should be considered within workstream I as it would be difficult to ring-fence around services alone under this approach. We further urge the workstream to take heed of developments under Workstream I including on fair allocation of taxing rights, dispute resolution and the relationship between the Framework Convention and the Protocol to avoid any contradictions between the two workstreams. On the latter, we urge that there should be a treaty override and that existing agreements that are not in line with the provisions of the Framework Convention and the Protocol should be amended or terminated. Finally, we call for transformative reforms on the concept of permanent establishment, arguing that the element of ‘fixed place’ is an outdated rule no longer applicable to the realities of cross-border services.

Comments on Workstream II

1. Addressing outdated nexus rules: Physical presence test

The concept of permanent establishment is no longer fit for purpose, especially within the context of cross-border services. This rule was established when services had to be physically performed by the service provider within the source country. This is no longer the case with the advent of digitalisation and globalisation. Despite this, international tax law has been slow to respond. Source taxing rights on

cross-border services have been restricted by inflexible requirements such as ‘fixed place of business’ and temporal conditions (eg. 183 days) as is the case with services permanent establishments and taxation of independent personal services. There have been attempts to create new nexus rules beyond ‘fixed place’ tests. It is notable that during the Fourth Session on negotiations, several Global South states suggested that if physical presence is to still be relevant, then ‘any presence’ regardless of the permanence and the duration of such presence should trigger their taxing rights. We agree with this approach on the basis that it has been difficult for both developing and developed countries to prove the existence of services permanent establishments.

Consequently, several source countries have attempted to further negotiate more taxing rights through new nexus rules such as the residence of the payor/ service recipient of the services. This approach, which is most prominent within technical services, has had limited success. The uptake of this article in existing double taxation agreements has been relatively low. This is mostly because this process has been left to bilateral negotiations where due to power dynamics, many developing countries fail to adequately promote their source taxing rights. Furthermore, there have been few attempts to review and renegotiate old age restrictive double taxation agreements.

However, the age of digitalisation renders nexus rules based on payments and /or residence of the service recipient are inadequate. Significant economic activity can be undertaken by non-resident entities without any physical presence and without any payments emanating from the source country. With this in mind, nexus rules based on significant interaction with the economy should be developed. We believe that ‘significant economic presence’ which is a nexus rule based on appropriate revenue thresholds, user or digital factors should be taken into consideration.

2. On tax methods: Addressing profit allocation rules

Beyond nexus rules, and in order to protect source taxing rights, it is crucial to also address profit allocation rules. This is essential for two main reasons:

- i. A significant portion of cross-border services are intra-group services.*
- ii. Tax abuse has been perpetuated through service fees with the aim of shifting profits to low-tax jurisdictions.*

We note with concern that there has been very little consideration of the tax treatment of intra-group services within the Options Paper. Services are often not a standalone sector or activity. Instead, they serve other sectors such as mining, manufacturing, agriculture among others, which are often the core activities of many MNEs. Additionally, intra-group services such as financial services as well as intellectual property embedded service fees have notoriously been known to be used to shift profits and erode tax bases.

We understand that there is some level of preference for gross-based taxation particularly among Global South countries. However, this is a short-term solution towards protecting source country taxing rights. Often, the costs of these taxes can easily be passed over to the user of the service. While they are easy to administer, there is also the risk that under-taxation of the income raised through the provision of intra-group services may be taking place.

To address the issues with profit allocation rules, we propose an approach whereby multinational enterprises are taxed on their global consolidated profits and that these profits should be apportioned on the basis of factors that reflect the economic activity of the corporation, and in particular, sales, headcount number of employees, and assets. Multinational enterprises that are key actors in the provision of services are highly integrated. The current profit allocation rules, contrary to the reality of how these entities operate, function on the basis of separate accounting. This has led to numerous challenges outlined under both workstream I and workstream III. Unitary taxation with formulary apportionment provides an opportunity to allocate profits fairly to countries reflecting the actual level of economic activity in each taxing jurisdiction. This approach should be supplemented by an agreed minimum effective corporate tax rate. We believe that this particular approach would be crucial to corporate taxation in totality and as such should be considered within the context of the Framework Convention on workstream I under the auspices of the Conference of Parties.

The success of unitary taxation with formulary apportionment is highly dependent on the availability of information. Unfortunately, accessing the consolidated financial statements of MNEs is difficult. Country-by-country reporting would be extremely useful but several limitations - including restrictions in use and limitations based on local filing - among other issues, has severely limited its potential. The current standards must be revisited. This necessitates a new public, country-by-country reporting standard that shall provide, among other things, the financial information, number of employees, assets held and users on a country-by-country basis.

Unitary taxation with formulary or fractional apportionment has received support from several Global South countries. For instance, the G24 has expressed its support for unitary taxation with fractional apportionment. Additionally, unitary taxation with formulary apportionment has been a recognised form of attribution of profits for a much longer period than the arm's length principle.

3. Implementation of the Protocol

We must take note of the areas within double taxation agreements that shall be affected by the Protocol. Our preliminary review as civil society shows that a significant portion of double taxation agreements would need to be changed. Indeed, the Protocol is tackling fundamental questions of international tax law, and this is what is required if we are to truly transform the international tax system in line with the Terms of Reference. Relatedly, we believe that an approach similar to the OECD's multilateral instrument to implement its BEPS1 agreement (the MLI) would not be sufficient to deal with the level of change that is being proposed by the Protocol. For example, the MLI BEPS includes opt in and opt out mechanisms, has led to the increase in legal complexity and an inconsistent application of changes to tax treaties. Therefore, a similar mechanism will only increase the complexity of the legal system and add to the number of instruments needed in order to meet the end goal. In fact, the MLI presents an example of the problems in the international tax system which need to be resolved.

We believe that a treaty override is necessary to amend or terminate existing DTAs. Bilateral negotiations have not been as effective as needed – to the detriment especially of Global South countries. A multilateral forum provides an opportunity to develop a harmonised and common approach and promote the best outcomes for member states who have been most affected by the restrictiveness of existing treaty networks. However, when an agreement is reached at the UN level, it must also be clear that all the Parties to the agreement have an obligation to implement it. A part of this obligation

should be to ensure that existing laws and agreements (including bilateral tax treaties) which go against the UN agreement should be modified, repealed, or terminated.

Lastly, it is vital to make the Protocol implementable for Member States that have no treaties (no treaty situations) or smaller treaty networks.

4. Prevention of contradictions between the Protocol and the Framework Convention

Great care must be taken to ensure that the Protocol shall not in any way contradict the provisions of the Framework Convention. Indeed, the Protocol must serve to implement the Framework Convention and cannot operate without strong foundations within the latter. We acknowledge the difficulties of ensuring that both instruments are in harmony with each other since their development is happening simultaneously. However, we provide the following 3 key instances in which the provisions of the Protocol must be in harmony with the Framework Convention:

i. The implication of fair allocation of taxing rights on nexus rules

The commitment on fair allocation of taxing rights/ equitable taxation of multinational enterprises has a huge bearing on nexus rules. During the Fourth Session, a written proposal provided by the African Group that speaks to the issue of nexus is as follows:

‘...no state party shall be denied the right to tax an income for the sole reason that such income has been derived from its jurisdiction by a taxpayer without a physical presence in that jurisdiction...’

We appreciate that there is acknowledgement of the limitations of the physical presence or permanent establishment tests within the Options Paper. However, the paper also reveals that there is hesitation to revisit the traditional rule of permanent establishment as shown in paragraph 18. We believe that failing to address the outdated physical presence test rules resolutely will lead to a contradiction between the Framework Convention and the Protocol. We also deem it crucial that the Protocol does not limit, but in fact anticipates, a larger reform of the international corporate tax system under the Convention, in line with the mandate of the ToRs to ensure equitable taxation of multinational enterprises.

ii. The implication of the relationship between the Framework Convention and the Protocols and other agreements

The relationship between the Framework Convention and other international agreements shall be discussed in Workstream I. Specifically, the discussions must include the Member States’ position around the legal effects of the Framework Convention and the Protocols on the existing tax treaties and other existing international agreements. Our position as civil society is that there should be an outright treaty override embedded within both the Framework Convention and the Protocol. It is important to maintain a consistent approach and promote coherence in the international tax system. For this reason, we believe that this issue should be earmarked pending the finality of discussions on this issue under workstream I.

iii. The implication of dispute resolution mechanisms on the Protocol

We note that there were discussions on the dispute resolution mechanisms that would be provided in case of any conflicts arising from the interpretation and the implementation of the Protocol. We believe that the dispute resolution mechanism for Protocol 1 should be guided by, and potentially subject to, the dispute resolution mechanism of the Framework Convention.

Signatories

1	11.11.11	Belgium
2	ADEM ASOCIACIÓN POR LOS DERECHOS DE LAS MUJERES	Argentina
3	African Women's Development and Communications Network (FEMNET)	Kenya
4	Akina Mama wa Afrika (AMwA)	Uganda
5	Alliance Sud	Switzerland
6	Alternative Information & Development Centre	South Africa
7	Amnesty International	International
8	Asia Development Alliance	Pakistan
9	Asian Peoples' Movement on Debt and Development (APMDD)	Asia
10	Asociación Transformar Perú	Perú
11	Association Centrafricaine pour le Bien Etre Familial (ACABEF)	République Centrafricaine
12	Association de Développement Agricole Éducatif et Sanitaire de Manono	République Démocratique du Congo
13	Association For Promotion Sustainable Development	India
14	Association pour l'Amelioration de l'Alimentation de la Mère et de l'Enfant au Sud Kivu (AMEKI-RDC)	République Démocratique du Congo
15	Bangladesh Krishok Federation	Bangladesh
16	Barwaqa Relief Organization	Kenya
17	Biozid Climate Institute	Bangladesh
18	Budget Advocacy Network (BAN)	Sierra Leone
19	Cadire Cameroon Association	Cameroun
20	Candid Concepts Development	Bahamas
21	CCFD-Terre Solidaire	France
22	CDES	Ecuador
23	Center for Economic and Social Rights (CESR)	International
24	Center for Grassroots Community Education and Development	Nigeria
25	Centre for Economic Governance (CEG)	Kenya
26	Civil Society for Poverty Reduction (CSPR)	Zambia
27	CNCD-11.11.11	Belgium

28	Comisión Nacional de Enlace (CNE)	Costa Rica
29	Copperbelt Health Education Project (CHEP)	Zambia
30	CRASH - Coalition for Research and Action for Social Justice and Human Dignity	Finland
31	Centre for Reproductive Health and Education (CRHE)	Zambia
32	CSPEEDA	Mali
33	Daayyaa Generation Network	Ethiopia
34	Dellasale Community Development Organization	Ethiopia
35	Disability Peoples Forum Uganda	Uganda
36	Don Amolo Memorial Kids' Ark (DAMKA)	Kenya
37	Dukingire Isi Yacu (DIY)	Burundi
38	Echoes of Women in Africa Initiative	Nigeria
39	Economic Justice Network of FOCCISA	South Africa
40	Equal Right	United Kingdom
41	EquityBD	Bangladesh
42	Espace Associatif	Maroc
43	European Network on Debt and Development (Eurodad)	Europe
44	Financial Justice Ireland	Ireland
45	Financial Transparency Coalition	International
46	Finnish Development NGOs - Fingo	Finland
47	Finnwatch	Finland
48	Free Trade Union Development Centre	Sri Lanka
49	Freedom from Debt Coalition - Philippines	Philippines
50	Fundar, Centro de Análisis e Investigación	Mexico
51	Futuros Mejores	Argentina
52	Global Alliance for Tax Justice	International
53	Global Call to Action Against Poverty (GCAP)	International
54	Global Campaign for Education (GCE)	International
55	Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)	International

56	Global Participe	Congo Brazzaville
57	Global Policy Forum Europe	Germany
58	Global Redistribution Advocates	International
59	Global Witness	International
60	Good Health Community Programmes	Kenya
61	Green Tax Youth Africa	Ghana
62	Greenpeace International	International
63	Grupo de Financiamiento Climático para América Latina y el Caribe (GFLAC)	America Latina y El Caribe
64	Health and Rights Education Programme (HREP)	Malawi
65	HUNDEE - Oromo Grassroots Development Initiative	Ethiopia
66	INESC - Instituto de Estudos Socioeconômicos	Brazil
67	Initiative for Social and Economic Rights (ISER)	Uganda
68	Initiatives for Safe Migration and Social Justice	Nigeria
69	Instituto Centroamericano de Estudios Fiscales (Icefi)	Centroamérica
70	Instituto Popular de Capacitación (IPC)	Colombia
71	Jeunesse Sédhiou Conscient	Sénégal
72	Kenya Human Rights Commission	Kenya
73	Kenya Medical Practitioners Pharmacists and Dentists Union	Kenya
74	Red Latinoamericana y del Caribe por Justicia Economica, Social y Ambiental (Latindadd)	America Latina y El Caribe
75	LDC Watch	Nepal
76	Liberia Network of persons living with HIV (LibNeP+)	Liberia
77	McGill Youth Advisory Delegation	Canada
78	Mines minerals & People	India
79	Monitoring Sustainability of Globalisation	Malaysia
80	Nadi Ghati Morcha - India	India
81	National Campaign for Sustainable Development Nepal	Nepal
82	Nigerian Women Agro Allied Farmers Association	Nigeria
83	Norwegian Church Aid	Norway

84	NRDS	Bangladesh
85	Observatorio de Finanzas y Clima (OFC)	America Latina y El Caribe
86	ONG Action 237-Suisse	Suisse
87	ONG Femme et Résilience pour les droits humains	Mauritanie
88	ONG Femmes-Initiatives "FEMI"	République Centrafricaine
89	Organization of African Youth	Africa
90	Pakistan Fisherfolk Forum	Pakistan
91	Pakistan Kissan Rabita Committee	Pakistan
92	Partners In Health	US/International
93	Polifa	Finland/Kenya
94	Portuguese Platform of Development NGOs	Portugal
95	Positive Money	United Kingdom
96	Pwani Youth Network	Kenya
97	Rede Brasileira pela Integração dos Povos (REBRIP)	Brazil
98	Recherche Sans Frontières/Research without Borders	République Démocratique du Congo
99	Red de Justicia Fiscal de America Latina y El Caribe (RJFLAC)	America Latina y El Caribe
100	Réseau de Développement des Femmes Pauvres (RDFP)	Rwanda
101	Réseau FIRD asbl, Fédération Integre pour la Reconstruction et le Développement	République Démocratique du Congo
102	ROTAB	Niger
103	SCODA Development Community Based Organization	Kenya
104	SEATINI-Uganda	Uganda
105	SERAC-Bangladesh	Bangladesh
106	Sindicato Nacional de Impuestos y Aduanas Colombia	Colombia
107	Society for International Development (SID)	International
108	SOMO	The Netherlands
109	South Asia Alliance for Poverty Eradication (SAAPE)	South Asia
110	Syndicat Chrétien des Travailleurs du Congo	République Démocratique du Congo
111	Tanzania Young Feminist Movement	Tanzania
112	Tax and Fiscal Justice Alliance Nepal (TAFJA Nepal)	Nepal

113	Tax and Fiscal Justice-Asia (TAFJA)	Asia
114	Tax Justice Network Africa (TNJA) and the African Civil Society Working Group on the UN Tax Convention	Africa
115	Tax Justice UK	United Kingdom
116	Tinada Youth Action Africa	Kenya
117	Union des Amis Socio Culturels d'Action en Developpement (UNASCAD)	Haiti
118	United Trades Union Congress (UTUC)	India
119	VIDC	Austria
120	Village Farmers Initiative (VFI)	Nigeria
121	War on Want	UK
122	Wemos	The Netherlands
123	Youth Advocates Ghana (YAG)	Ghana
124	Youth for Tax Justice Network	Uganda