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Protocol 1 - Article 1

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I speak on behalf of ICRICT.

ICRICT recognizes that gross-basis withholding taxes, such as those proposed in Articles 5, 6, and 7, present practical advantages. They are simpler to administer, less susceptible to manipulation through profit shifting, and may offer developing countries in particular a more straightforward path to revenue collection. Indeed, we strongly recommend that countries continue to introduce such taxes—including digital services taxes—in the absence of a multilateral solution. Moreover, addressing taxation domestically is always needed, as a treaty cannot address what the domestic legislation has not taxed. The Protocol can provide a much-needed standardized approach to these gross-basis taxes across all service categories.

However, it is our view that gross-basis taxation should not be the sole solution. The final solution must include a method for sharing the rights to tax income or profits based on some form of apportionment, whether formulary or fractional. Both parties to a transaction are necessary for its completion—the service provider and the service recipient. In the absence of well-defined competitive prices for the service being provided, a 50/50 allocation of the tax base between source and residence States may be appropriate. This is particularly relevant in cases of no physical presence.

Per your questions on Article 1, paragraph 3, which introduces a "low level of taxation" rule—a variant of a Subject to Tax Rule (STTR), ICRICT recognizes the underlying principle of the STTR: where a source State has ceded taxing rights on certain outbound payments under a tax treaty, it should be able to recover those rights when the income is taxed in the payee's State below a certain rate . This is a legitimate mechanism to address base erosion and profit shifting.

Including a STTR in all treaties would allow source countries to tax income if the other country does not tax it at an agreed-upon minimum rate, enabling (mostly developing) countries to tax income that is currently avoiding taxation.

ICRICT has recommended that countries introduce the UN STTR in their tax treaties, as it provides a broader and more balanced framework than the OECD version, as it permits taxing all income, without any materiality thresholds, and has a flexibility of taxing at the domestic country's rate, unless otherwise agreed. In respect of this last point, it would probably require some fine tuning with the rest of the protocol, but we support its incorporation in this protocol.

Thank you, Mr. Chair.