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).

2 September 2026

Subject: Joint civil society and trade unions submission regarding the Co-Lead's Draft Protocol on the Taxation of Income from Cross-Border Services (A/AC.298/CRP.33), published 20 July 2026.

We welcome the opportunity to provide written input to the process. Please find below a joint submission on behalf of the **Global Alliance for Tax Justice (GATJ) and over 130 civil society organizations and trade unions**. GATJ is a Southern-led global coalition in the tax justice movement, and facilitates civil society engagement in the UN Tax Convention negotiations and the coordination of joint submissions with the support of its members Tax Justice Network Africa (TJNA) and the European Network on Debt and Development (Eurodad). GATJ also facilitates the Civil Society Financing for Development Mechanism's Workstream on Domestic Resource Mobilization.

GLOBAL ALLIANCE FOR TAX JUSTICE

CIVIL SOCIETY FINANCING FOR DEVELOPMENT Mechanism

Abstract

We hereby provide comments on specific elements in the draft Protocol 1 text. However, we remain concerned about the approach taken. In particular, it is problematic that the current draft strongly resembles a typical bilateral tax agreement aimed at avoiding double taxation. This creates a mismatch with the objectives of the Convention, and rather than promoting reforms and addressing systemic problems, the Protocol risks reinforcing them.

Strengthening source country taxing rights related to cross-border services is vital, and the Protocol must deliver truly fair and effective solutions which promote implementation of the Convention.

Specific points:

- The hierarchical allocation of source country taxing rights, which is outlined in the draft, can inadvertently result in cancellation of legitimate claims for source country taxing rights;
- The Protocol must establish a multilateral system that acknowledges, protects, coordinates and can enforce source country taxing rights in multiple countries simultaneously;
- Keeping in mind draft Article 21 of the Convention, the Protocol should integrate the obligation of Parties to ensure alignment between existing tax instruments and the provisions and principles of the Convention;
- Furthermore, the Protocol should:
    - Introduce the concept of Significant Economic Presence;
    - Include a preamble and objective, including to clarify the link to the Convention;
    - Include "anti-lock-in" clauses to curb obsolete norms and work toward inclusive, equitable, efficient, and effective rules that truly transform the international tax system within the framework of the Convention.
    - Include international shipping and air transport;
    - Avoid introducing rights for multinational enterprises.

Submission

Overall

Below, we provide comments on specific elements of the current draft. However, these inputs should be seen in the context of our fundamental concerns with the approach taken.

We are highly supportive of the mission of strengthening source country taxing rights related to cross-border services. However, the draft Protocol currently resembles a typical bilateral tax agreement aimed at avoiding double taxation between two states, and more specifically the UN Model Convention. We highly caution against this approach for several reasons, including:

1. Hierarchical allocation of taxing rights does not create fairness

Bilateral treaties divide taxing rights into the dichotomy of residence versus source states and do not adequately consider competing source taxing rights of third states. This can create 'triangular' cases with source to source conflicts. While, in the draft Protocol, there are attempts to resolve this through providing a hierarchy of sourcing rules, this approach can inadvertently deter the fair allocation of taxing rights.

Draft Article 5 of the Convention provides that market location and data generation are valid connecting factors for taxing right allocation. It is critical that the Protocol is developed as a truly multilateral treaty that provides both clear rules for resolving multiple source taxing rights without undermining any source country taxing rights.

Suggestions:

- <u>The Protocol must develop a truly multilateral approach as opposed to trying to add on to the existing bilateral tax agreements. Core decisions must be contained in the Protocol, but they can be operationalized by the future Meeting of the Parties (MOP).</u>

- <u>The Protocol 1 negotiations must include the concept of Significant Economic Presence (SEP), including to address digital services provided by non-resident foreign corporations without physical presence or permanent establishment.</u>

(See details below under Articles 5-9).

2. The Protocol must implement the Convention

The Protocol is not a standalone instrument, its relationship with the Convention must be clearly outlined.

Suggestions:

- <u>Add a preamble and objectives to the Protocol, including to recapture the most relevant sections of the Convention, and describe how the Protocol aims to promote</u>

them. This should include the Convention's draft Article 5 on Fair Allocation of Taxing Rights and Article 21, including the obligation of Parties to align their existing international tax agreements with the Convention.

- Streamline the relevant sections of the Convention into the Protocol and add a General Provision to underline that: *"This protocol shall promote the implementation of the Convention, including the obligation of Parties to align their existing international tax agreements and related instruments with the provisions and principles of the Convention."*

3. Paving the way towards fundamental reforms and avoiding "lock-in"

Rather than supplementing the existing tax system, including the arm's length principle and existing bilateral tax treaties, the Protocol should start building an alternative based on truly multilateral cooperation and fair and effective rules. This should include a corporate tax system based on unitary taxation with formulary apportionment.

However, at the very least, the Protocol must not end up "locking" countries into outdated rules and norms developed through non-inclusive processes outside of the Convention, and going against its principles. The current draft builds heavily on, and endorses, the existing system. This could complicate the further development and implementation of the Convention, including in relation to ensuring a fair allocation of taxing rights, equitable taxation of MNEs, addressing harmful tax practices and increasing transparency.

Suggestion: The Protocol should have general "anti-lock-in" clauses, such as:

- *"Nothing in this Protocol shall be invoked for the purpose of making Parties endorse or comply with specific tax rules, standards, definitions or other norms developed outside the framework of the UN Framework Convention on International Tax Cooperation."*

And:

- *"No obligations, provisions or mechanisms under this Protocol shall prevent the Parties from developing, adopting and implementing any new rules and provisions to promote the achievement of the objectives, principles and commitments of the Convention. This includes instances where such rules or provisions would depart from the approach taken in existing international tax instruments."*

Specific comments on Articles

Scope

Article 2 – Taxes Covered

Article 2 outlines taxes to be covered, including digital services taxes and equalization levies, which would be in scope as long as they function like income taxes, regardless of how they are described domestically. Residents of states that are party to the Protocol are covered.

The Protocol should provide the opportunity to multilaterally determine when taxes are in scope. While the initial provisions should be outlined in the Protocol itself, the Meeting of the Parties (MOP) should be given the powers to determine whether a specific tax measure is in scope, to prevent interpretive issues and fragmentation.

Suggestion: Maintain the scope that is currently outlined in Article 2, but introduce a mandate for the MOP to review the effectiveness of the Article and, if necessary, expand the list of taxes covered.

Article 8 – International Shipping and Air Transport

Transport services constitute a significant portion of services provided by non-residents in many developing countries. Despite progress in the UN Tax Committee on this issue, Article 8 simply exempts both shipping and air transport.

Taxation of income from international shipping and air transport is key, but it requires special provisions, particularly profit allocation/attribution rules, including to resolve competing source taxing rights. Thus, it would greatly benefit from unitary taxation and formulary apportionment.

Suggestion: Delete Article 8 and incorporate a specific element on taxation of international shipping and air transport in the Protocol.

Article 3 Definitions

3.1(a) "person":

The definition of "person" in Article 3.1(a) conflates natural persons with legal persons such as companies. Within the UN system, the rights, rules and obligations applicable to natural persons and companies differ fundamentally.

Suggestion: Delete the concept "person" and distinguish clearly between natural and legal persons in the text.

3.1(g) "Applicable tax instrument":

The purpose of introducing the concept of "applicable tax instrument" seems to be to uphold definitions of "royalties" established by existing treaties – even where they go against the definition agreed under the Protocol (Article 3.1(h)), and to limit the effectiveness of the Protocol (Article 20 – Entry Into Force). This contradicts the Convention's objective of establishing an inclusive, efficient, equitable and effective international tax system. Furthermore, draft Article 21 of the Convention requires Parties to align their existing international tax agreements with the Convention. The Protocol must contribute to, rather than undermine, this mission.

Suggestion: Delete paragraph 3.1(g) - "applicable tax instrument" - and the related wording in Articles 3.1(h) and 20.

Article 4 Resident

Article 4 introduces a definition of the term "Resident". However, this term has relevance far beyond the issue of taxation of cross-border services and in thus better addressed under the Convention.

Articles 4 and 11 also assume that taxpayers are male.

Suggestions:

- Delete Article 4 and introduce a definition of "Resident" under the Convention.
- Apply gender-neutral wording in the Protocol (Article 4 and 11).

Articles 5-9

Addressing overlapping source claims

Article 5, 6 and 7 provide several sourcing rules, including based on physical performance, consumer's residence and residence of end users. The text suggests a hierarchy among these. This will have significant consequences in a scenario where there are overlapping claims by source/market jurisdictions on the same income, and a stringent hierarchy could lead to the denial of legitimate claims of source taxing rights.

Suggestion: Rather than opting for a simplistic hierarchy, the Member States should develop a multilateral system that acknowledges, protects, coordinates and enforces source taxing rights in multiple countries at once.

Introducing Significant Economic Presence (SEP)

The Protocol acknowledges the presence of users and data collection as connecting factors to give source states taxing rights, but imposition of gross based withholding taxes is still pegged on a payment happening.

The Protocol also acknowledges SEP (albeit somewhat indirectly) but does not allow for net based taxation to happen automatically – the taxpayer has to elect it.

Suggestions:

- The Protocol should align existing taxing rights with the current economic realities by adopting a new nexus based on SEP. While a definition of SEP should be included in the Protocol, the MOP can be mandated to perform periodic reviews and update it. When developing the definition, Member States can, for example, consider the following elements:
  a. Digital factors – including local domain names, offering local payment options, having local digital platforms or marketplaces.
  b. User-based factors – including monthly active users, volume of digital content collected from users resident in the market jurisdiction, and number of online contracts concluded.
  c. Thresholds - to limit application to companies with significant revenue, digital and/or user-based factors.
- Revise the text to remove the "taxpayer pick and choose" elements in Articles 5.4; 6.6; 7.4 and 9.

Upholding taxing rights without payments

In the current text, the default appears to be gross based taxation, which would require a payment taking place. But what happens where there are no payments? Article 9 could have provided more guidance on this, but it only specifies that an enterprise without physical presence shall be taxed on the basis of a "reasonable allocation of its profits". Article 9 also fails to provide an automatic and explicit profit allocation method based on formulary or fractional apportionment.

Suggestion:

- Rename Article 9 from "Taxation Based on Physical Presence" to "Methods of Taxation";
- Add a specific profit allocation method based on formulary or fractional apportionment to Article 9. While the Protocol should introduce the profit allocation mechanism, the MOP can be mandated to perform periodic reviews.

Non-discrimination (Article 9)

Non-discrimination can be an important principle in some contexts, but the broad principle suggested in the draft Protocol is inappropriate. This provision could have damaging impacts, since in many ways, domestic tax laws provide slightly different treatment for domestic and foreign enterprises, including to prevent harmful tax practices. Countries also legitimately use taxation as an instrument to pursue development objectives, including by supporting domestic producers, protect strategic sectors, address deindustrialization, and promote small enterprises.

Suggestion: Delete paragraph 2 in Article 9.

Article 11 - Disputes

The Protocol should not award rights to multinational enterprises (MNEs)

UN treaties are negotiated and agreed between states, and the provisions entail commitments that the states make towards each other. It is not common practice to award rights to MNEs – even in the case where the treaty regulates such corporations. Within UN treaties the states can take on obligations to provide certain processes related to MNEs, without the creation of a corresponding right for corporations to demand such processes.

Suggestion:

- Delete all text that suggests the creation of rights for MNEs, including the following wording in Article 11 "*Where a person considers that the actions of one or more States Parties result or will result for him in taxation not in accordance with the provisions of this Protocol, he may…*".

Article 12 – Exchange of Information

Unprecedented levels of information sharing shall be required to effectively tax cross-border services, including information on residence, assets, payroll, amount of user data and revenue collected. The Protocol must provide a mechanism for this purpose, while taking into consideration the different levels of capacities of Parties and the mechanisms that should be established directly under the Convention.

Suggestions:

- We refer to our submission under Workstream I, where we call for the introduction of *automatic* information exchange under Article 11. Protocol 1 should link to this and add the necessary additional elements.

- Delete wording that undermines information exchange, including:
  - Limiting exchanges to what is "~~foreseeably relevant~~". All information that "may be" relevant should be included;
  - Inappropriate restrictions on the use of information received, including secrecy restrictions imposed through domestic laws of the sending State. Information exchange must be regulated through international standards agreed under the Convention, and domestic laws must be amended accordingly.

Article 20 – Entry Into Force

We refer to our submission under Workstream I, including the call for Article 21 of the Convention to be substantially strengthened, and paragraph 21(2) to be deleted.

As mentioned above (under Article 3 – Definitions), we also call for the concept "applicable tax instrument" and all related text to be deleted.

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CIVIL SOCIETY FINANCING FOR DEVELOPMENT Mechanism

Signatories

1	ActionAid Zambia	Zambia
2	Active Citizenship Foundation (ACF) Inc.	Philippines
3	Africa Network for Environment and Economic Justice(ANEEJ)	Nigeria
4	African Youth Employment Initiatives, AYEI	Burundi
5	ALL INDIA WOMENS HAWKER FEDERATION	India
6	All Nepal Peasants Federation	Nepal
7	Alliance Sud	Switzerland
8	Alternative Information and Development Center (AIDC)	South Africa
9	AMA (Veeduría Ciudadana Ambiental del Cesar - Amigos del Medio Ambiente)	Colombia
10	Amnesty International	International
11	Arab Campaign for Education for All - ACEA	MENA (Arab Region)
12	Arab Network Popular Education - Lebanese Coalition for Education	Lebanon
13	Ars Socialis, A.C.	Mexico
14	Asia Development Alliance	Asia
15	Asian Peoples' Movement on Debt and Development (APMDD)	Asia
16	Asociación civil JAPIQAY, Memoria y Ciudadanía	Perú
17	Asociación de Empleados Fiscales de Ingresos Públicos	Argentina
18	Asociación Migración y Cooperación Internacional Araguaney	España
19	Asociación Mujeres Emprendedoras de Alta Verapaz MEAV	Guatemala
20	ASSOCIATION DE DEVELOPPEMENT AGRICOLE EDUCATIF ET SANITAIRE DE MANONO	République démocratique du Congo
21	Attac Austria	Austria
22	Awaz Centre for Development Services	Pakistan
23	Bangladesh Krishok Federation	Bangladesh
24	Barwaqa Relief Organization	Kenya
25	Brazilian Campaign for the Right to Education	Brazil
26	Bridge Agenda	United States of America and Ghana
27	CADE - Fundacion SES	Argentina/ América Latina y El Caribe
28	Campaña Latinoamericana por el Derecho a la Educación-CLADE	América Latina y El Caribe

29	CCFD-Terre Solidaire	France
30	CEFILAT	Argentina
31	Center for Economic and Social Rights (CESR)	International
32	Centre for Environment, Human Rights & Development Forum - CEHRDF	Bangladesh
33	Centre of Economic Governance (CEG)	Kenya
34	Centre Régional Africain pour le Développement Endogène et Communautaire (CRADEC)	Cameroun
35	Centro de Derechos Económicos y Sociales CDES	Ecuador
36	Centro de Estudios de Derecho, Justicia y Sociedad - Dejusticia	Colombia
37	Centro Internacional de Investigación Otras Voces en Educación	Venezuela
38	CNCD-11.11.11	Belgium
39	Coalición Colombiana por el Derecho a la Educación	Colombia
40	Coalition éducative Tunisien	Tunisie
41	Colecivo de Educacion para todas y todos de Guatemala	Guatemala
42	Comissão Episcopal de Justiça e paz e Integridade da Criação	Angola
43	Community Focus Group (CFG)	Kenya/ Africa
44	Conseil pour l'Education et le Développement, COPED	Burundi
45	Consejo de Jóvenes de Oaxaca - México	México
46	CONSOTONORTE	Colombia
47	CRASH - Coalition for Research and Action for Social Justice and Human Dignity	Finland
48	Development Alternatives with Women for a New Era (DAWN)	Global South
49	DISABILITY PEOPLES FORUM UGANDA	Uganda
50	Economic Justice Network of FOCCISA	South Africa
51	Education For All Somalia (EFASOM)	Somalia
52	European Network on Debt and Development (Eurodad)	Europe
53	Evangelical Assiciation of Malawi	Malawi
54	Financial Justice Ireland	Ireland
55	Finnish Development NGOs Fingo	Finland
56	Finnwatch ry	Finland
57	Focus on the Global South	Asia
58	Food Sovereignty and Climate Justice Forum	Nepal/ South Asia

59	Foro Internacional de Inversión en Juventud	México
60	Fundacion Luis Felipe Velez	Colombia
61	Fundación Organización Argentina para Sociedades Inclusivas (OASI)	Argentina
62	Fundación Quilombo Masai Colombia	Colombia
63	Fundar, Centro de Análisis e Investigación A.C.	México
64	Futuros Mejores	Argentina
65	Ghana National Education Campaign Coalition - GNECC	Ghana
66	Global Alliance for Tax Justice	International
67	Global Call to Action Against Poverty (GCAP)	International
68	Global Campaign for Education (GCE)	International
69	Global Peace and Development Organization (GPDO)	Liberia
70	Global Policy Forum Europe	Germany
71	Global Redistribution Advocates	International
72	Global Student Forum	International
73	Global Witness	International
74	GMAF Grupo de Mujeres de la Argentina Foro de VIH Mujeres y Familia	Argentina
75	Government Accountability Project	United States of America
76	Green Tax Youth Africa	Ghana
77	Grupo de Cambio Climático para América Latina y el Caribe (GFLAC)	Mexico
78	HIMALAYA NITI ABHIYAN	India
79	Inesc - Instituto de Estudos Socioeconômidos	Brazil
80	Initiative for Social and Economic Rights (ISER - Uganda)	Uganda
81	Initiatives for Safe Migration and Social Justice	Nigeria
82	INRAV	Venezuela
83	Institute of the Blessed Virgin Mary - Loreto Generalate	International
84	Instituto Popular de Capacitación IPC	Colombia
85	Intercontinental Network for the Promotionm of Socail Solidarity Economy (RIPESS)	International
86	I-Watch Organization	Tunisia
87	Jordan Network for Education for all	Jordan
88	JUBILEO 2000, RED ECUADOR	Ecuador/ América Latina y El Caribe

89	KMT	Tanzania, East Africa
90	Latindadd	América Latina y El Caribe
91	LDC Watch	Nepal
92	Malawi Economic Justice Network MEJN	Malawi SADC
93	McGill Youth Advisory Delegation	Montreal, Canada
94	MenaFem Movement for Economic, Development And Ecological Justice	SWANA
95	Migrant Forum in Asia	Philippines/ Asia Region
96	NATIONAL HAWKER FEDERATION	India
97	National Society of Conservationists - Friends of the Earth Hungary	Hungary
98	Network for Women's Rights in Ghana (NETRIGHT)	Ghana
99	Netzwerk Steuergerechtigkeit (German Alliance for Tax Justice)	Germany
100	Norwegian Church Aid	Norway
101	Norwegian Church Aid	Kenya
102	Norwegian Church Aid	Angola
103	Norwegian Church Aid - DanChurch Aid	Malawi
104	ORG Bahamas Foundation	Bahamas
105	Organisation Paysanne pour le Développement Durable	République démocratique du Congo
106	OSC por el Desarrollo Sostenible en México	Mexico
107	Oxfam	International
108	Partners In Health	United States of America / International
109	People’s Alternative Studies Center for Research and Education in Social Development (PASCRES)	Philippines
110	Plateforme DPEG	Guinée
111	Polifa	Kenya/ Finland
112	Positive Money	United Kingdom
113	Red de Justicia Fiscal de América Latina y El Caribe	América Latina y El Caribe
114	Red Nacional del Agua de Colombia	Colombia
115	REDO Kenya	Kenya
116	ROTAB	Niger
117	Rural Reconsturction Nepal	Nepal
118	SAAPE	Nepal

119	SENTRO Confederation of Progressive and United Workers	Philippines
120	Sigaw ng Kabataan Coalition	Philippines
121	Society for International Development	International
122	SOMALI JOURNALISTS SYNDICATE	Somalia
123	SEATINI	Uganda
124	Sukaar Welfare Organization	Pakistan
125	SYNDICAT CHRETIEN DES TRAVAILLEURS DU CONGO CONGO	République démocratique du Congo
126	Tax and Fiscal Justice Alliance Nepal	Nepal
127	Tax and Fiscal Justice Asia	Asia
128	Tax Justice Network	International
129	Tax Justice Norway	Norway
130	The Kenya Human Rights Commission	Kenya
131	Third World Network	International (Asia, Africa, Europe, America)
132	TI-Taiwan	Taiwan
133	TJNA	Africa
134	Trade Justice Pilipinas	Philippines
135	Vienna Institute for International Dialogue and Cooperation (VIDC)	Austria
136	War on Want	United Kingdom
137	WomanHealth Philippines	Philippines
138	Women In Democracy And Governance (WIDAG)	Kenya/ Africa