Fifth Session, UN Tax Convention Negotiations
August 11, 2026

Protocol 1 - Articles 5-7

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Article 6, Paragraph 2 – We note that this is a recognition of the right of the market jurisdictions, or source countries, to tax the income of non-resident foreign corporations that provide automated digital services to their residents.

The very nature of this type of service obviates the need for physical presence or permanent establishment, thus allowing the service provider to remain untaxed in the market jurisdiction, with the foregone revenues disproportionately harming the developing countries.

We also note that under the default rule proposed in Article 6, the tax rate is imposed on the gross amount. Para 6 (b) in turn GIVES the service provider THE OPTION OF BEING taxed in the market jurisdiction despite its lack of physical presence there.

However, this is where we wish to express some concern in reference to the lack of clarity on the nexus and sourcing rules in reference to automated digital services. We worry that Article 6 read together with Article 9 does not provide enough clarity on what the nexus rules shall be in relation to situations where there are no payments.

We propose clearer nexus rules based on significant economic presence, which would then allow net-based taxation of automated digital services.

Additionally, with regard to the definition of automated digital services, the draft text provides a list of 9 different types of automated digital services covered under this Protocol. This list seems to be exhaustive, yet the very rapidly evolving landscape of automated digital services (not to mention for example the rapid developments in AI, crypto services, and financial technology) requires flexibility. In order for this Protocol to be future proof, the article must ensure that new types of automated digital services could be included in the scope of the Protocol, without having to go through a laborious and long amendment process.

Thus, we request that it be made clear in paragraph 4 that this list is not exhaustive. Moreover, we suggest adding a sentence giving a clear mandate to the Meeting of the Parties, in line with Article 13, to review and update the list of digital services covered under this article.