YTJN New York Tax Talks Day Seven Roundup: Fifth Session of the Intergovernmental Negotiating Committee to Develop a UN Framework Convention on International Tax Cooperation

New York | 11 August 2026

The Big Picture: Digging into the Details of Protocol 1

Day 7 marked the second and final day of discussions on Protocol 1 on the taxation of cross-border services. After the high-level debate on Day 6 about the protocol's direction and scope, delegates rolled up their sleeves and got into the technical details article by article.

The Co-Lead, **Ms. Liselott Kana** from **Chile** commonly known as Lisa, opened the day by recapping where things stood on **Article 2 (Taxes Covered)** : "*We have agreed that the scope of taxes covered should be broad. It should include taxes that apply to digital services. Our definition should be as precise as possible to avoid uncertainties.*"

The day covered a wide range of articles:

- **Article 3**: General Definitions
- **Article 5**: Fees for Services
- **Article 6**: Income from Automated Digital Services
- **Article 8**: International Shipping and Air Transport
- **Article 9**: Taxation Based on Physical Presence

The discussions revealed deep technical divisions—but also a genuine effort to find common ground.

Article 2: Taxes Covered (Morning Wrap-Up)

Two countries made final interventions on Article 2 before moving on.

Ghana (on behalf of the Africa Group) defended the article's approach: "*This protocol applies to income taxes on services, irrespective of how it is named in domestic law. That's why digital services taxes and equalization taxes are included. This text also rightly excludes VAT and other consumption taxes.*"

The United Arab Emirates reiterated concerns: "*We do not support the inclusion of excise taxes solely on the basis that it may be applied by some jurisdictions in a manner that departs from the general norm of such taxes.*"

The Co-Lead summarized the emerging consensus: "*We have agreed that the scope of taxes covered should be broad... It could be reference to taxes on income with a similar economic effect... or functional equivalent of such taxes. We will be as precise as possible.*"

YOUTH FOR TAX JUSTICE NETWORK

UN TAX CONVENTION NOW!

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CIVIL SOCIETY FINANCING FOR DEVELOPMENT Mechanism

The CS FfD Mechanism is an open civil society platform including several hundreds of organizations and networks from diverse regions and constituencies around the world. CS FfD Mechanism's core principle is ensuring that civil society can speak with one collective voice.

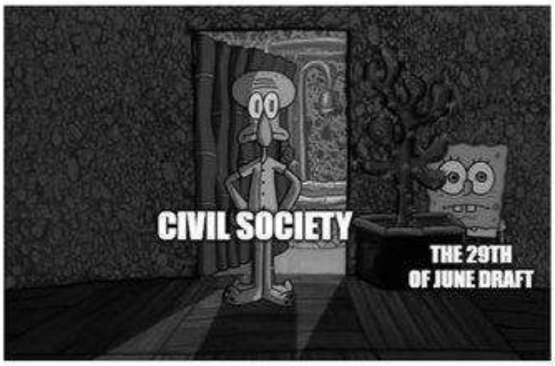
THE MYSTERIOUS 29TH OF JUNE DRAFT

Once again, an air of mystery and secrecy hovered over Conference Room 2 yesterday. A mysterious draft, known as the "June 29th draft," occupied the minds and discussions of the delegates. A draft endowed with mysterious powers, including the ability to be invisible to civil society. But what could it possibly conceal that was so important that civil society was forbidden to see it?

Dear delegates, put yourselves in our shoes for a moment, and imagine that we constantly mention documents essential to these negotiations, documents to which we would have access but you wouldn't? Wouldn't that be frustrating? And even more than that, wouldn't that be counterproductive? Well, you have to understand that this is exactly the absurd situation we have been going through with this protocol, that we have been experiencing since INC1 and that we risk experiencing again. How can we expect from us relevant contributions and comments, useful to the discussion, if we lack the necessary information to even understand the discussion itself?

This secret draft is just the tip of an iceberg of opacity fueled by secret Zoom meetings, to which we have still not been invited. Depriving civil society of these essential elements of understanding and excluding them from intersessional discussions is preventing the citizens of all the countries we represent from having all the information needed to understand this process, which will greatly impact their lives. This is also, yet again (we cannot repeat it enough), going against the spirit of transparency and inclusivity that should govern these negotiations.

Good news is you can still make amends for your mistakes... A first step would be to reveal this mysterious draft to us. A second, and perhaps most important step would be to avoid repeating the same mistake all over again. This would imply to put an end to the illegitimate practice of secret Zoom meetings and simply live up to the mandate of transparency and inclusivity given to us.



Read the latest issue in EN, ES & FR: https://ow.ly/V18a50ZyRYL

Article 3: General Definitions

1. "*For the purposes of this Protocol, unless the context otherwise requires:*

    a) *The term "person" includes an individual, a company and any other body of persons;*

    b) *the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;*

    c) *the term "enterprise" applies to the carrying on of any business;*

    d) *the term "enterprise of a State Party" means an enterprise carried on by a resident of a State Party;*

    e) *the term "national" means:*

        i. *any individual possessing the nationality of a State Party; and*

        ii. *any legal person, partnership or association deriving its status as such from the laws in force in a State Party;*

    (f) the term "international traffic" means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a State Party and the enterprise that operates the ship or aircraft is not an enterprise of that State;

    (g) the term "applicable tax instrument" means any bilateral agreement, multilateral convention, protocol to the Convention other than this Protocol, or any other instrument in force between two or more Parties that establishes rules for the allocation of taxing rights between them;

    (h) the term "royalties": (i) shall have the meaning that it has in any applicable tax instrument between two relevant States Parties to the Protocol; or (ii) means, if there is no such applicable tax instrument, payments of any kind: (a) received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, or secret formula or process; or industrial, commercial or scientific equipment; or

(b) received as a consideration for information concerning industrial, commercial or scientific experience; and

(i) the term "competent authority" means the persons and authorities listed in Annex.

2. *As regards the application of the Protocol at any time by a State Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Protocol applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.*

The Debate: How Much Should We Define?

Mauritius raised critical questions about key terms: "*How are we to interpret the term 'income'? Should it be gross income, total income, net of related expenses?... Regarding 'statutory tax rate'... In Mauritius, companies are subjected to a statutory rate of 15%. But we also have corporate social responsibility tax (2%) and corporate climate responsibility tax. Should it be 15% or 15% plus the others?*"

Nigeria (on behalf of the Africa Group) proposed several additions: "*We have not seen the definition of 'business'... definition of 'consumer'... definition of 'income'... We need clarity on the scope of 'international traffic'.*"

Kenya raised concerns about the interpretive rule in paragraph two: "*We propose to have a rule to resolve difficulties of interpretation and application of the protocol, especially where it's a multilateral one... we run a danger of developing precedents between two entities if we run with that clause.*"

Honduras proposed a distinction: "*Where a term is essential to determining the scope, nexus, characterization of income, or allocation of taxing rights... an autonomous definition at the protocol level should be preferred. For terms that do not materially affect the allocation of taxing rights... domestic law can appropriately operate as a residual interpretive rule.*"

ATAF (African Tax Administration Forum) echoed: "*On the definition of service... we should have a definition that is more operational... cross-border services in which the service provider and the consumer and the payer are in different jurisdictions.*"

The DMUN Foundation (youth) recommended: "*The definition of person should expressly address partnerships, trusts, estates, fiscally transparent entities, and other legal arrangements... Definitions of enterprise and enterprise of a state party should clarify the meaning of business.*"

BCAS (Bombay Chartered Accountants Society) noted: "*The term 'agent' in Article 9 needs to be defined or clarified... The terms 'end users,' 'user data' using Article 6 also need to be defined.*"

TAM (Texas A&M) raised a fundamental question: "*Services appears 43 times in the protocol... Services is not defined in the OECD or the UN model. I'm not aware of any treaties where the term is defined... The parties should discuss whether a definition of services should be under the definitions article.*"

IDS (Institute of Development Studies) noted: "*The term 'enterprise'... is a little bit uncertain because there's some circularity here... it could be considered if the term can perhaps also be avoided entirely.*"

Article 5: Fees for Services

1. *Fees for services arising in a State Party and paid to a resident of another State Party may be taxed in that other State.*

2. *However, subject to the provisions of Articles 6, 7, 8, and 9, fees for services arising in a State Party may also be taxed in that State and according to the laws of that State, but if the beneficial owner of the fees is a resident of another State Party, the tax so charged shall not exceed [___] per cent of the gross amount of the fees.*

3. *The term "fees for services" as used in this Article means any payment in consideration for any service but shall not include any amount paid to an individual in his or her capacity as an employee of an enterprise.*

4. *The provisions of Article 9 shall apply instead of paragraphs 1 and 2 if the beneficial owner of fees for services, being a resident of a State Party:*

   a) *Carries on business in another State Party in which the fees for services arise and the fees for services are derived from such business activities; or*

   b) *elects, under administrative procedures established by such State Party without changing the general principle hereof, to be taxed on such fees under the rules of Article 9. 5. 6.*

5. *For the purposes of this Article, fees for services shall be deemed to arise in a State Party if:*

   a) *the services are performed physically in that State;*

   b) *if the conditions of (a) are not met, the consumer of the services is a resident of that State;*

   c) *if the conditions of (a) and (b) are not met, the payer is a resident of that State or the payment is deductible in that State for purposes of determining the payer's taxable profits in that State even though the payer is a resident of another State.*

6. *Where, by reason of a special relationship between the payer and the beneficial owner of the fees for services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each State.*

The Debate: Ordering Rules, Gross vs. Net, and Special Relationships

Norway raised concerns about the ordering rules in paragraph five: "*The intention is to create a hierarchy between physical presence, consumer residences, and payer residences. That might work in a bilateral setting, but it seems not to sufficiently consider the implications in a multilateral setting... With no globally mutually exclusive nexus rule... the result is a real risk of overlapping claims across several states.*"

Switzerland agreed: "*The ordering rule... gives preference to the state where physical presence takes place. This is a long-established principle... The goal to prevent multiple taxation is, however, not met... The ordering rules should be complemented by a rule that states that fees arise only in one state.*"

Spain provided a practical example: "*An entity in State A provides a service... a client resident in State C... the service is carried out by a worker in State B... State B could consider that the income arises from their territory... State C could also consider that they have the right to tax. This test doesn't seem to adequately resolve cases where there are several different sources.*"

The UK supported these views: "*The UK remains concerned that Article 5 represents a significant departure from the principle that taxing rights over business profits should be allocated to jurisdictions based on where businesses act and create value.*"

Singapore noted: "*Our greater concern still remains that Article 5 applies to a diverse scope of services, very different in economic risk and profit profiles... The protocol should remain anchored in the established permanent establishment framework.*"

The Africa Group (Nigeria) defended the approach: "*The African group commends the work undertaken... However, in paragraph 5(b), there is no definition for the word 'consumer'... In paragraph 6, the text makes use of the term 'special relationship'... this terminology requires further clarification.*"

India raised concerns about the net basis election: "*The draft provides that the election would be exercised in accordance with administrative procedures established under domestic legislation. This creates a certain degree of dependence on the domestic legislative and administrative framework... Appropriate safeguards should be built into the framework.*"

Nigeria (national capacity) questioned the logic: "*We are unclear on the inclusion of a physical performance of a service in paragraph 5(a) as a sourcing rule for fees for technical services, when such income will not be taxable under that article... physical performance of a service should constitute a sourcing rule under Article 9 and not Article 5.*"

The UAE called for exclusions: "*In addition to the exclusion made for employment income, there should also be exclusions for educational institutions as well as services provided for individuals' personal use.*"

Azerbaijan noted: "*Definition of fee for services is very broad... Paragraph 6 refers to 'special relationship,' but this term is not defined.*"

CFS (Committee on Fiscal Studies) proposed a solution: "*Where two countries rely on different tests, the country relying on the test that comes first in the list has the taxing right. Where two* *countries rely on the same test, the fees are divided between them in proportion according to where the services were performed."*

BCAS offered a technical analysis: "*I'm not sure what was contemplated by the drafters of the ordering rule, but I think it may be working perfectly well without creating multiple taxation... because we are contemplating a multilateral convention... [it] will automatically give a situation that there are only two states left.*"

NYU (New York University) noted: "*5 does permit multiple source jurisdictions... You could get a situation where you have source-to-source double taxation... An approach could be to make sure it's a hierarchy.*"

Article 6: Income from Automated Digital Services

1. *Income from automated digital services arising in a State Party, underlying payments for which are made to a resident of another State Party, may be taxed in that other State.*
2. *However, [subject to the provisions of Article 8,] income from automated digital services arising in a State Party may also be taxed in the State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of another State Party, the tax so charged shall not exceed [per cent of the gross amount of the payments underlying the income from automated digital services.*
3. *The term "automated digital services" as used in this Article means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.*
4. *The term "automated digital services" includes especially:*
   a) *online advertising services;*
   b) *supply of user data;*
   c) *online search engines;*
   d) *online intermediation platform services;*
   e) *social media platforms;*
   f) *digital content services;*
   g) *online gaming;*

h) cloud computing services; and

i) standardized online teaching services.

5. *The provisions of this Article shall not apply if the payments underlying the income from automated digital services qualify as "royalties" within the meaning of Article 3(1)(h) or "insurance premiums" under Article 7, as the case may be.*
6. *The provisions of Article 9 shall apply instead of paragraphs 1 and 2 if the beneficial owner of the income from automated digital services, being a resident of a State Party:*

   a) carries on business in another State Party in which the income from automated digital services arises and the income from automated digital services is derived from such business activities; or

   b) elects, under administrative procedures established by such State Party without changing the general principle hereof, to be taxed on such income from automated digital services under the rules of Article 9.
7. *For the purposes of this Article, income from automated digital services shall be deemed to arise in a State Party if:*

   a) the consumer of the services is a resident of that State;

   b) if the conditions of (a) are not met, the consideration received for providing the services depends on end users that are in that State; or

   c) if the conditions of (a) and (b) are not met, the services provided depend on user data generated from that State.
8. *Where, by reason of a special relationship between the payer and the beneficial owner of the income from automated digital services or between both of them and some other person, the amount of the payments underlying such income, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.*

The Debate: AI, Definitions, and Sourcing

The Africa Group (Nigeria) raised several concerns: "*What will the position be when there is no human involvement at all, as we have it in AI? Is this scenario included? We suggest the definition be* *changed to 'requiring no or minimal human involvement'... We further request that AI-related services be specially listed."*

Kenya added: "*I believe it's not really possible to list and clearly capture all the categories that would really exist... we can have an omnibus at the end where we say, 'any other service carried out over the Internet or an electronic network... that is otherwise not expressly provided.'*"

The Russian Federation supported: "*We support including and adding to this list... services and platforms based on AI, which are provided automatically.*"

France raised a practical concern: "*DST is considered to be out of scope because it's considered to be an indirect tax... how would the system work in practice with this article being enforced?*"

Spain echoed: "*Spain shares the same concerns... We designed our [DST] so that it wouldn't be considered an income tax.*"

The Co-Lead responded: "*What we're trying to do is to include all digital service taxes because we want them to be creditable on the other side. We want to have an agreement on what this is because there's no agreement on what it is today. No one is solving the problem.*"

Ghana defended: "*Article 6 makes the protocol technology neutral and fitful to the TOR mandate on the digitalized economy. If we exclude DSTs by label, we create a loophole. MNEs will just shift to revenue-based taxes to avoid the protocol.*"

Committee on Fiscal Studies proposed a revised definition: "*The term 'automated digital services'... means any service delivered through the Internet or another electronic network, including a service delivered by an automated, autonomous, or agentic system where the delivery of the service to a particular consumer or transaction does not depend on human intervention... Human involvement in the development, training, supervision, maintenance, or improvement of the service... shall not be taken into account.*"

New York University noted: "*Both Article 5 and Article 6 relate to a tax on income from automated digital services. They themselves don't resolve that question... There would need to be an explicit deeming rule that a DST is a tax on income from services.*"

Institute of Development Studies raised: "*A lot of the services which are currently considered as technical professional services... can be brought into the scope of AI and then possibly into the scope of this Article 6.*"

TWN (Third World Network) called for flexibility: "*The list seems to be exhaustive, yet the dizzying and rapidly evolving landscape of automated digital services... requires flexibility. We request that it be made clear in paragraph four that this list is not exhaustive.*"

Article 8: International Shipping and Air Transport

"*Income from international traffic shall not be covered by this Protocol.*"

The Debate: Should Transport Be Excluded?

Panama supported the exclusion: "*There already is a normative and tax framework appropriate for these sectors... having two parallel frameworks could lead to a contradiction in norms.*"

Belgium agreed: "*The brackets can be omitted in this article. It can stand as the exemption for income from international traffic.*"

The UAE echoed: "*We think we can remove the square brackets as well and keep the income from international traffic outside the scope of the protocol.*"

Nigeria (on behalf of the Africa Group) proposed a more precise definition: "*The scope of this article should be limited to income covered under alternative A of the UN model... 'Income from international traffic means amounts received in consideration for the carriage of passengers, mail, livestock, or goods in international traffic.'*"

The Russian Federation asked: "*The definition includes air and sea transport... but there is also road, rail. Do we need to extend this definition to also include those types of transport?*"

IATA (International Air Transport Association) strongly supported retention: "*International aviation presents a particular challenge for the allocation of taxing rights... Article 8 does not create a new solution for aviation. It adequately preserves a solution that the states have already developed collectively.*"

TJN (Tax Justice Network) raised concerns: "*We have concerns about carving out shipping and air transport from the protocol scope. The Framework Convention's commitment to a fair allocation of taxing rights under Article 5 applies across all sectors.*"

Article 9: Taxation Based on Physical Presence

1. *If an enterprise of a State Party carries on business in another State Party consisting of the provision of services through employees or agents that are physically present in such State, the profits of the enterprise may be taxed in the other State but only so much of them as is derived from the provision of such services. An enterprise that does not physically provide services in that State but with respect to which an election has been made pursuant to paragraph 4(b) of Article 5 or 7 or paragraph 6(b) of Article 6 shall be taxable on a*

reasonable allocation of its profits from the relevant business activity, taking into account the gross revenues generated in that State as compared to the gross revenues of the enterprise from such business activities.

2. *Taxation under paragraph 1 shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.*
3. *Where profits include items of income which are dealt with separately in other Articles of this Protocol, then the provisions of those Articles shall not be affected by the provisions of this Article.*

The Debate: What Is Physical Presence? How Do We Allocate Profits?

The Africa Group (Nigeria) proposed a major redraft: "*Physical presence goes beyond just agents and employees... We propose replacing 'employees or agents that are physically present' with 'physical presence'... and provide a list of what constitutes physical presence: 'a place of management, a place of performance, supervisory activity, a branch, an office, a workshop...'* "

Nigeria also noted: "*The second sentence should be separated into a different paragraph... The words 'reasonable allocation' need to be defined or taken out... the process of the allocation should be clearly stated.*"

Kenya raised concerns: "*The phrase 'reasonable allocation'... Vulnerability lies therein... 'taking into account' is legally weak. It does not strictly tie the allocation solely to the revenue fraction.*"

Switzerland proposed: "*In order to provide taxpayers with legal certainty... we suggest using a simple rule... that allocates a fixed share of the revenue in question, as well as of the expenses that relate to that revenue to the concerned state.*"

France noted: "*The election principle would be key for France in the overall balance of the protocol... But then it needs to be workable... What is a 'reasonable allocation of profits'? I don't know what that means because everybody could say it's reasonable that I get the whole profits.*"

Institute of Development Studies warned: "*A company could avoid source taxation by simply placing one or two employees or agents in that country... effectively avoiding source taxation... perhaps the first sentence is not actually needed.*"

ATAF provided a detailed critique: "*Article 9 does not seem to be stable enough to carry the weight that has been placed on it... The instability derived from four defects... One, the entry test... Two, where there is no election, Article 9 supplies no attribution rules... Three, paragraph two provides no clear definition for physical presence... Four, paragraph three is contradictory.*"

BCAS noted: "*Article 9 does not give taxing rights to the country of residence... The determination of profits as per domestic law and application of arm's length pricing could result in significant disputes.*"

PSI (Public Services International) raised: "*Taxpayer should not have unrestricted discretion to choose the method that applies... We strongly support a net taxation mechanism, but one linked explicitly to a formulaic or fractional approach to profit allocation.*"

The Big Announcement: Lisa Is Retiring

At the end of the day, the Chair announced that **Lisa** is stepping down as Co-Lead of Workstream Two: "*Lisa has been a very valuable asset. We started working together on the terms of reference... She did a lot of efforts to keep working even in her vacations and holidays... She is retiring.*"

Lisa said: "*It's been a fantastic experience to have been involved in this process... I wish you all the best.*"

The Chair noted that nominations are now open for a new Co-Lead for Workstream Two: "*The door is open for anyone who would like to be nominated.*"

Workstream II Co-Lead Liselott "Lisa" Kana

What Do YOU Think? 🤔

On definitions (Article 3):

- Should the protocol define key terms like "business," "consumer," "income," and "services" autonomously or should it rely on domestic law definitions? Some say autonomous definitions provide certainty. Others say domestic law is more practical.

On the ordering rules (Article 5):

- Should there be a single sourcing rule to prevent multiple jurisdictions from claiming taxing rights over the same income? Or should the protocol allow multiple sources to reflect today's complex business realities?

On gross vs. net taxation:

- Should the default be gross basis taxation (simpler to administer) or net basis taxation (more accurate reflection of profits)? Some say gross taxation is essential for developing countries. Others say it discourages trade and investment.

On automated digital services and AI (Article 6):

- Should the protocol specifically include AI in the definition of automated digital services? How can we ensure the protocol remains "future-proof" as technology evolves?

On international transport (Article 8):

- Should shipping and air transport be excluded from the protocol—or should they be included like all other services?

On physical presence (Article 9):

- What constitutes "physical presence"? One day? One week? Should there be a minimum threshold? And how should profits be "reasonably allocated" when there is no physical presence?

On optionality:

- Should countries be able to choose which provisions of the protocol apply to them or should the protocol be all-or-nothing?

We want to hear from YOU! Share your thoughts on these questions. Tag us on social media or write to us. Your voice matters in building a tax system that works for people—not just profits.

Stay Engaged

The UN Framework Convention on International Tax Cooperation is one of the most important negotiations of our time. **Young people have a stake in the outcome.** Follow YTJN for daily updates, and use your voice to demand a tax system that works for people—not just profits.