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

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The Big Picture: The First Full Draft of Protocol 1 Lands.

Day 6 marked a major milestone: for the first time, delegates had a full draft text of Protocol 1 on the taxation of cross-border services to discuss. But the reception was mixed to put it mildly.

The Co-Chair opened by noting that this was the "first reading" of the protocol and that "big divergences" were expected. The Co-Lead, Lisa, acknowledged that "it's a draft that no one likes," adding that "probably the best drafts are those which no one likes."

The day quickly revealed deep divisions over the protocol's direction. The "June draft" (which offered more flexibility and optionality) was contrasted with the "July draft" (which the Co-Lead described as a "skeleton" to spark discussion). Many countries expressed surprise and disappointment at the shift.

The Co-Lead reminded delegates of the political reality: "*When we talk here, we try to get to consensus. But if you don't get to consensus, we will have a majority vote... the votes count.*"

The Core Debate: How Much Flexibility Should the Protocol Have?

A central question emerged: **Should the protocol be a fixed, all-or-nothing instrument, or should it allow countries to pick and choose which provisions apply?**

Those who wanted more flexibility argued that tax treaties are carefully balanced bilateral agreements and that a one-size-fits-all approach would not work.

Switzerland proposed an interesting idea: "*flexibility regarding the content... maybe some countries would want only 12A, maybe 12A, 12B, 12C.*" They also suggested flexibility regarding implementation some countries might want automatic treaty changes like the Multi-Lateral Instrument, others might prefer a bilateral approach.

The Netherlands stated: "*For the Netherlands, it would be simply impossible to commit to amending DTAs affecting the allocation of taxing rights without reconsidering this overall balance of each individual DTA.*"

Belgium questioned why the June draft, which offered optionality was replaced: "*It is very difficult for us from a political view and from a technical point of view to regard this process as being real meaningful negotiations.*"

China noted: "*We welcome the flexibility in the draft, the June version. We think that it will help address the different needs of the state parties.*"

Germany emphasized: "*We continue to favor a solution that complements and builds upon existing standards... we prefer flexibility for states through an elective mechanism.*"

Hungary stated: "*Optionality and flexibility are key features to be able to make reservations, to choose between different options.*"

Those who opposed optionality argued it would undermine the protocol's integrity.

The African Group (Nigeria) stated: "*The African group remains fully committed to this work stream... the age is willing to continue negotiation on the basis of the Coleads draft.*"

ATAF (African Tax Administration Forum) pushed back hard: "*What we have seen this morning is optionality being pushed to extreme... it is optional whether a party enters into the protocol, it is optional what scope of instrument will be covered, and it's optional which paragraphs apply. We struggle to find precedents for such an instrument.*"

Ghana added: "*Flexibility cannot mean that the core of the protocol becomes optional. If we make it entirely optional, we'll end up with no protocol at all.*"

Brazil offered a nuanced perspective: "*Even if we decide to apply in situations in which there is no developing country involved, we can consider making it optional because the state is in a much more balanced position compared to the situation in which one state is a developing country.*"

The Russian Federation called for realism: "*Ultimately, the protocol won't be signed by a majority of states. So if we want our work to end in success, we all need to make an effort, maybe concede on something.*"

Article 1: Persons Covered and the Subject-to-Tax Rule

"*1.This Protocol shall apply to persons who are residents of one or more of the States Parties.*
2. A person who is fiscally transparent... shall be treated as a resident of a State Party to the extent that the income derived from the provision of cross-border services is treated as income of a resident of that State Party.
3. Where income arising in a State Party is subject to tax in the other State Party at a statutory rate below [X]%... the State Party in which the income arises may tax such income in accordance with its domestic law.
4. Nothing in this Protocol shall affect the taxation by a State Party of its residents except with respect to the benefits granted under Articles 9, 10, and 11."

The Debate

The UK asked for clarification: "*It remains unclear whether the protocol is intended to supplement existing treaty networks or establish an alternative framework for the taxation of cross border services.*"

India raised concerns about the relationship with existing treaties: "*If that is indeed the approach, we would benefit from greater clarity on how the provisions of Protocol one are to be integrated with the existing framework.*"

Italy opposed the subject-to-tax rule: "*We do not consider appropriate to include a subject to tax rule in this article... it's unclear whether the subject to tax rule prevails over the taxation established in Article 5 to 7.*"

Nigeria (for the Africa Group) proposed revisions: "*The statutory rate should be defined in the protocol for clarity... when the protocol is switched off by the subject to tax rule (SDTR), the applicable law should revert to domestic legislation and not the bilateral treaty.*"

Kenya noted: "*Paragraph three introduces the SDTR by pointing out the issue of low-level taxation... we propose that we have a paragraph expressly bringing into play and prioritizing domestic law in the event the protocol is switched off.*"

Norway asked: "*We read it as possibly having a scope beyond income from services as it refers to any income. We suggest limiting the scope to income from services.*"

Azerbaijan echoed: "*Reference to 'any income' is too broad for a protocol dealing with cross border services... provision should also clearly specify both minimum tax rate and the maximum rate that may be imposed.*"

Zambia defended the provision: "*We feel that paragraph three of Article 1 supports source-based taxation, and so it is particularly important for most developing countries... the absence of this clause will allow income to move from the country of economic substance to a low tax jurisdiction.*"

BCAS (Bombay Chartered Accountants Society) raised a technical concern: "*Article 5(4) read with Article 9 overrides paragraph 1 and 2 of Article 5 and effectively takes away the residents crediting taxing rights.*"

IDS (Institute of Development Studies) noted: "*Subject to tax rule is not sufficient to address the possible problem of treaty shopping... it may be necessary to include a provision against treaty shopping.*"

Article 2: Taxes Covered

"This Protocol shall apply to taxes on income imposed on behalf of a State Party... irrespective of the manner in which they are levied, including taxes on income from cross-border services, digital services taxes, equalization taxes, excise taxes, and other taxes having a similar economic effect... It shall not apply to value added taxes or other generally applicable consumption taxes."

The Core Debate: What Counts as an Income Tax?

This became one of the most contentious discussions of the day largely because of the inclusion of excise taxes and the phrase "similar economic effect."

India expressed reservations: "*India has expressed its reservation regarding the inclusion of excise taxes within the scope of covered taxes... bringing such taxes within the framework introduces a layer of complexity.*"

Malaysia echoed: "*For Malaysia, excise tax, digital services tax, and sales and services consumption tax are considered as indirect taxes and therefore should be included in the carve out sentence.*"

Norway argued: "*Digital Service Taxes (DSTs) and equalization taxes are not income taxes, gross-based or turnover-based taxes. Treating them as covered income taxes is a category error... The draft excludes VAT but includes excise taxes, which in fact are specific consumption taxes.*"

Burkina Faso asked: "*Why we were talking about excise taxes and digital taxes and equalization taxes? For us, these taxes mainly refer to taxes on consumption.*"

France agreed: "*In France, at least digital service tax is an indirect tax... We are saying here that if it has similar economic effects, and we don't really know what that means, it really blurs the text.*"

The UK questioned: "*The inclusion of digital services taxes, equalization taxes, and excise-type taxes appears to extend the protocol well beyond its stated purpose... traditional taxes covered provisions are generally grounded in legal characterization, whereas Article 2 appears to move towards an economic effects test.*"

Brazil offered a different view: "*We generally support the inclusion of excise taxes... there are excise taxes on services in different jurisdictions... we are in the position that DSTs should be part of the protocol regardless of the name.*"

The African Group (Nigeria) proposed a middle ground: "*The African group notes the inclusion of clear provisions... we are concerned with the inclusion of excise taxes. From our understanding, excise is not a tax on income. However, with respect to digital service taxes... we welcome their inclusion as long as those taxes have a functional equivalent to taxes on income.*"

Kenya clarified: "*The intention of the protocol is to ensure that a comprehensive solution for the taxation of cross-border services is achieved... the purpose of including examples is to see how well this can be captured.*"

Honduras suggested: "*The discussion should focus less on the specific name of a tax and more on the characteristics that justify its inclusion... common elements such as that they are designed to tax income or economic returns derived from cross-border services.*"

Senegal added: "*Each state should be able, in line with their tax system, to categorize whether or not a tax is to be categorized as an income tax or another tax.*"

Singapore proposed: "*Perhaps one possible lens is to cover those taxes that are akin to taxes on profits or net income rather than taxes imposed on gross revenue, transactions, or consumption, regardless of how they are characterized in domestic law.*"

The Co-Lead clarified: "*We need to understand what is an income tax. I don't think there exists a whole agreement in this group on what is an income tax... we need to get away from labeling the tax and looking at the construction of what is an income tax and what is the equivalent of an income tax.*"

Other Key Interventions

Jamaica made a procedural suggestion: "*I think at some point during this week we should find time to have an informal on the issue of this protocol.*"

Mexico offered a broader reflection: "*Is this a process in which we're going to come and agree with the lowest common denominator because it's what drives the consensus, or are we going to try to be inclusive?*"

The Russian Federation proposed: "*Maybe we could have some vote as far as who is in favor of which versions, which options, so that we'd be absolutely clear what are the possible ways forward.*"

ICC (International Chamber of Commerce) warned: "*Gross basis taxation is economically inefficient and according to multiple academic studies, will inhibit growth and development.*"

The Independent Expert on a Democratic International Order (UN mandate holder) stated: "*Regardless of how transformative or evolutionary the convention will be... the most fundamental achievement would be to establish a unified global architecture for international tax cooperation.*"

CCFD (civil society) noted: "*The optionality already exists. Article 20 of the convention: join or not yet. This protocol allocates tax rights between states. A right on one side must match obligation on the other.*"

What Do YOU Think? 🤔

On the protocol's direction:

Should Protocol 1 be a fixed, all-or-nothing instrument or should countries be able to pick and choose which provisions apply? Some say optionality is essential for broad participation. Others say it would make the protocol meaningless.

On the subject-to-tax rule (Article 1, paragraph 3):

Should source countries be able to tax income when it's taxed below a minimum rate in the recipient country? Some say this prevents profit shifting. Others say it's unnecessary and creates complexity.

On covered taxes (Article 2):

Should the protocol cover digital services taxes, equalization taxes, and excise taxes or only traditional income taxes? Some say all taxes that act like income taxes should be covered. Others say this blurs the line between income and consumption taxation.

On the role of the protocol:

Should the protocol establish an entirely new multilateral framework for taxing cross-border services or should it simply help countries fill gaps in their existing bilateral treaties?

On the process:

Some countries are frustrated that the June draft (which offered flexibility) was replaced. Others say the current draft better reflects the majority view. How should the negotiations balance different perspectives?

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.