International Environment House 2
Chemin de Balexert 7-9
POB 228, 1211 Geneva 19
Switzerland
Tel.: +41(0)22 791 80 50

South Centre Inputs on Workstream II on Taxation of Services (Co-Lead's Draft Protocol on the Taxation of Income from Cross-Border Services)

26 August 2026

I. Abstract

The South Centre welcomes the Draft Protocol on the Taxation of Income from Cross-Border Services and submits the following comments:

1. **Scope**: Cover all cross-border services broadly, not limiting it to technical and digital services alone, to avoid fragmentation.
2. **Optionality**: No reservations on key substantive provisions (Articles 5, 6, 7, 9); reservations permitted only for non-key administrative/procedural matters (e.g., rates, timelines).
3. **Article 1**. Subject to tax rule can apply to cross-border services income within Protocol scope, with the statutory rate fixed in the Protocol; extend paragraph 4's residence state preservation to Articles 5–11.
4. **Taxes covered**: Exclude excise taxes.
5. **Define** "**beneficial owner," "payer," "payment,"** and **"special relationship**"; as applied in Articles 5 and 6.
6. The automated digital services list in Article 6(4) should be expressly non-exhaustive.
7. The protocol should **provide guidance on nexus and revenue-sourcing rules** under Articles 5 and 6, particularly for remote/data-driven monetization with no direct in-country payment.
8. The protocol should **broaden "physical presence**" beyond employees/agents and provide **guidance on profit-allocation methods**, including simplified profit allocation approaches under Article 9.
9. **Existing treaties:** Where inconsistent with an existing treaty, the Protocol should ideally automatically override the relevant provisions. However, in case treaty-by-treaty renegotiation is preferred, then the Protocol should trigger mandatory renegotiation within a defined timeframe aligned with Article 21 of the Framework Convention.
10. **Implementation:** In case the option of treaty-by-treaty renegotiation is chosen, then implementation can be done by a UN Fast-Track Instrument to streamline bilateral treaty alignment.

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II. General Comments

The South Centre commends the Co-lead, secretariat, and Intergovernmental Negotiating Committee (INC) for the progress under WS II and for the preparation of the Co-Lead's Draft Protocol on the Taxation of Income from Cross-Border Services

III. Specific Comments

Below are specific comments and inputs for the Articles and general observations:

General comment

Broad scope of services to avoid fragmentation. It should not only cover digital services, as even some of the traditional services that were usually provided via a physical presence are now provided remotely. This allows comprehensiveness and adapting to changing business models.

Optionality

The Protocol should remain optional. However, once a State joins the Protocol, reservations should not be permitted in respect of key substantive provisions, particularly the core nexus and taxing-rights provisions in Articles 5, 6, 7 and 9, as this could undermine the objectives of the Protocol.

Reservations may be permitted for non-key administrative or procedural provisions, including rates or thresholds left for domestic specification and administrative timelines.

Article 1 – Persons covered

Paragraph 3 – Subject to Tax Rule (STTR):

Paragraph 3 should clarify that the STTR applies to income from cross-border services within the scope of the Protocol. The statutory rate should be specified in the Protocol to facilitate a consistent and multilateral application of the STTR, rather than leaving the applicable rate to bilateral negotiations. The rate should be sufficiently robust to prevent low-tax structures from undermining source-country taxing rights.

Further explanatory notes on the application of this paragraph can be provided in additional guidance.

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Paragraph 4:

Paragraph 4 should apply to Articles 5–11, rather than only Articles 9–11. This would ensure that the preservation of the residence State's taxing rights is appropriately aligned with all substantive taxing rights and relief mechanisms established under the Protocol for all the articles distributing taxing rights.

Article 2 – Taxes covered

The provision should cover taxes imposed on income from cross-border services, as well as other taxes that are functionally equivalent to taxes on such income. Digital Services Taxes (DSTs) and equalization levies may be expressly included. Excise taxes should not be expressly listed, as they are generally understood and classified in many countries as taxes on consumption rather than taxes on income. Their inclusion could create unnecessary ambiguity on the intended scope of the Protocol.

Article 5 – Fees for Services

The terms “beneficial owner”, “payer” and “payment” as used in the article should be defined.

The gross-basis withholding tax rate under paragraph 2 should be determined as part of the negotiations and specified in the Protocol.

Accompanying guidance should be developed on the sourcing rules in paragraph 5, particularly on the application of the rules where the consumer is resident in one State Party and the payer is resident in another State Party.

The term “special relationship” in paragraph 6 should be clarified, either through a definition or accompanying guidance.

Article 6 – Automated Digital Services (ADS)

The terms “beneficial owner”, “payer” and “payment” as used in the article should be defined.

The gross-basis withholding tax rate under paragraph 2 should be determined as part of the negotiations and specified in the Protocol.

In paragraph 4, add “any other” after item (i) to make the list of expressly non-exhaustive and future-proof.

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The Protocol should include revenue sourcing rules in paragraph 7.

Accompanying guidance should be developed, either in the Protocol itself or by subsequent guidance issued by the Parties to the Protocol, on the sourcing rules in paragraph 7, particularly on the application of the rules where the consumer is resident, users are based, data is generated from, and revenue is sourced.

The guidance should also clarify how much revenue should be allocated to a source state where taxation is based on the location of end users; or user data generated in that State, <u>including situations where no direct monetary transaction occurs in the source State</u>.

The term “special relationship” in paragraph 6 should be clarified, either through a definition or accompanying guidance.

Article 9 – Taxation based on Physical Presence

"Physical presence" should not be limited to employees or agents. The concept should be broadened to also capture other indicators of presence (e.g., a place of management, office, branch, or other facility through which the service is performed).

The term “agent” as used under the article should be defined.

Paragraph 1 should be split into two separate paragraphs: the first addressing taxation on the basis of physical presence, and the second addressing taxation arising from an election exercised under Articles 5, 6 or 7.

"reasonable allocation" language in paragraph 1 requires more elaboration.

Guidance should be developed on the basis for allocating profits, which could permit simplified approaches for net basis taxation, such as fractional or formulary apportionment. Article 12B(3) of the UN Model could provide a useful basis for developing such an approach. The methodology can particularly specify the appropriate profit margin, business segment, revenue denominator, treatment of losses, and proportion of profits attributable to the market jurisdiction.

The article could also include an anti-abuse rule to prevent manipulation of the net-basis profit allocation in a manner that artificially reduces the taxable amount compared with the gross-basis taxation that would otherwise apply.

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Relation with existing tax treaties

The Protocol should complement existing treaties where they achieve the objectives of the Protocol, but should not allow the existing treaties to undermine the substantive taxing rights agreed in the Protocol.

Where no bilateral tax treaty exists, the Protocol should provide the applicable legal basis, as contemplated in Article 20(3)(a).

For existing tax treaties, Article 20(3)(b) currently links the relationship to Article 21 of the Framework Convention.

The Protocol can provide that where certain provisions of an existing tax treaty are inconsistent with the Protocol, the Protocol shall automatically override those inconsistent provisions.

However, in case States Parties prefer treaty-by-treaty renegotiation, then the Protocol should ensure the Parties review and align the treaty within a defined timeframe, through mandatory renegotiations aligned with the provisions of Article 21 of the Framework Convention.

This approach preserves State consent and treaty stability. The Protocol should function as a floor: existing treaties may continue to apply, and may provide additional or complementary benefits, but may not reduce taxation below the level agreed in the Protocol.

Implementation

Bilateral treaty renegotiation is slow and resource-intensive.

A UN Fast-Track Instrument (FTI) could be deployed to implement Protocol 1 (and future protocols, or mandated actions by the conference of parties requiring treaty changes).

The FTI would provide a streamlined, multilateral mechanism to amend bilateral treaties consistently with the Protocol, rather than requiring individual treaty-by-treaty bilateral renegotiation.

This preserves State consent while enabling faster and more consistent implementation.