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EVIDÊNCIAS DE INFRAESTRUTURA E TRIBUTAÇÃO DIGITAL NO BRASIL: UM TESTE DE CONGRUÊNCIA PROBATÓRIA EM QUATRO DIMENSÕES PARA LUCROS EMPRESARIAIS NÃO REGIDOS POR CONVENÇÃO TRIBUTÁRIA APLICÁVEL

INFRASTRUCTURE EVIDENCE AND DIGITAL TAXATION IN BRAZIL: A FOUR-GATE EVIDENTIARY CONGRUENCE TEST FOR BUSINESS PROFITS NOT GOVERNED BY AN APPLICABLE INCOME-TAX TREATY

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RESUMO: Uma transação digital pode gerar registros precisos de infraestrutura no Brasil sem demonstrar que a empresa descrita nesses registros auferiu a renda empresarial correspondente. O artigo examina quando tais registros podem sustentar inferência relativa ao imposto sobre a renda incidente sobre lucros remotos de não residente não regidos por convenção tributária aplicável. Por meio de análise jurídico-dogmática e documental, examina o Regime Especial de Tributação para Serviços de Datacenter (Redata) e compara funcionalmente a presença econômica significativa e a extinta Equalisation Levy da Índia, o Amount A da OCDE e instrumentos convencionais e negociais das Nações Unidas. A pesquisa separa fatos normativos vigentes, inferências probatórias admissíveis e prática administrativa, e desenvolve protocolo de congruência em quatro dimensões: sujeito do registro, atividade medida, período e perímetro contábil e titular da renda. Sua contribuição incremental é procedimental: teste iniciado pela definição da pretensão, critérios explícitos para incompatibilidade material e ponte documental e regra assimétrica de parada que impede a suficiência probatória de substituir norma de incidência, atribuição, temporalidade, alívio ou cobrança. Matriz comparativa, exercício de sensibilidade e casos transacionais construídos ilustram correspondência, correspondência condicional e recusa. O protocolo constitui estrutura conceitual de auditoria, e não ferramenta de conformidade empiricamente validada; a reprodutibilidade entre avaliadores e o desempenho administrativo permanecem questões para validação empírica futura. O Redata pode tornar a atividade de infraestrutura altamente visível sem, isoladamente, provar a renda tributável de outra pessoa jurídica. Eventual nexo legal com o mercado brasileiro deve suceder ao mapeamento das transações, à identificação do titular da renda, ao critério verificável de fonte, ao controle de sobreposição e à existência de via realista de cobrança.

Palavras-chave: Tributação digital. REDATA. Congruência probatória. Nexo com o mercado. Renda de não residentes.

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ABSTRACT: A digital transaction can generate precise Brazilian infrastructure records without showing that the enterprise described by those records earned the corresponding business income. This article asks when such records can support an income-tax inference concerning remote nonresident profits not governed by an applicable income-tax treaty. Using doctrinal and documentary analysis, it examines Brazil's Special Tax Regime for Data Center Services (REDATA) and functionally compares India's significant-economic-presence rule and former Equalisation Levy, OECD Amount A, and United Nations treaty and negotiating instruments. The study separates enacted legal facts, permissible evidentiary inferences, and administrative practice, and develops a four-gate protocol testing record subject, measured activity, period and accounting scope, and income recipient. Its incremental contribution is procedural: claim-first testing, explicit criteria for material mismatch and documentary bridges, and an asymmetric stopping rule that prevents evidentiary sufficiency from substituting for taxing authority, attribution, timing, relief, or collection. A comparative matrix, sensitivity exercise, and constructed transaction files illustrate correspondence, conditional correspondence, and refusal. The protocol is a conceptual audit framework rather than an empirically validated compliance tool; inter-reviewer reproducibility and administrative performance remain questions for future empirical testing. REDATA may make infrastructure activity highly visible while remaining insufficient, by itself, to prove another legal person's taxable income. Any Brazilian market-nexus rule should therefore follow transaction mapping, identification of the income holder, reviewable sourcing, overlap control, and a realistic collection route.

Keywords: Digital taxation. REDATA. Evidentiary congruence. Market nexus. Nonresident income.

1 INTRODUCTION

An advertisement reaches a user in Brazil; Brazilian servers process part of the delivery; a foreign advertiser pays a foreign platform. None of those facts, taken alone, identifies the person that acquired the income, the portion attributable to Brazil, or the domestic rule authorizing taxation. The analytical danger is therefore not simply a lack of information. It is the use of accurate information to prove a different legal proposition. Freire (2021) shows why data-driven nonresident income can fall outside familiar payment chains remitted from Brazil. The question is what each record can legitimately prove about a named person, a defined receipt, and a defined period.

Infrastructure still matters, but it does not answer the income-holder question. Imparato, Avi-Yonah and Sam (2026) argue that comparatively immobile data-center infrastructure may re-anchor parts of the corporate tax base in an artificial-intelligence economy. That proposition concerns economic and jurisdictional significance; it does not establish which enterprise earned a particular advertising, subscription, or platform receipt. Permanent-establishment analysis likewise asks whether a particular enterprise conducts

business through a legally relevant local presence, not whether servers located in a country automatically belong to every customer that uses them (JAMROŻY; MAJDOWSKI, 2022).

Brazil's REDATA makes the distinction unusually observable. Law No. 15,504/2026 inserted the regime into Law No. 11,196/2005 and attached federal tax incentives to qualifying data-center projects and statutory commitments (BRASIL, 2026c). REDATA can generate quantified and, in specified settings, audited information about the beneficiary's capacity, domestic supply, research investment, and sustainability. The regime does not thereby create a transaction-level dataset for every customer or identify which foreign enterprise earned a separate advertising, subscription, or platform receipt.

The article asks when a regulatory record about Brazilian infrastructure can validly support an income-tax proposition concerning remote business profits received by another legal person. Its policy question is narrower still: in a relationship in which no applicable income-tax treaty governs the business profits under examination, what conditions would have to be satisfied before a statutory Brazilian market nexus could be coherently considered? The two questions are deliberately separated. Evidence may support a factual proposition without creating taxing power; conversely, a legal basis cannot repair proof that identifies the wrong person, activity, period, or income holder.

The article does not claim novelty for remote-market taxation, evidentiary relevance, or the language of a 'virtual branch'. India legislated significant economic presence in domestic law (INDIA, 2025), and prior Brazilian work used the virtual-branch formulation while expressly recognizing that formal legislation would be required (OLIVEIRA et al., 2026). The narrower contribution developed here is methodological: a repeatable protocol for identifying cross-regime transfer errors in which a record generated about one legal subject is offered as proof of another person's income.

Nor does the analysis assume a tax-free baseline. Brazilian law already imposes withholding on specified payments to nonresidents when statutory conditions are met, including Article 7 of Law No. 9,779/1999 (BRASIL, 1999). Magalhães and Christians (2024) show why income-tax techniques remain serious alternatives to standalone digital levies. A new nexus therefore deserves consideration only after existing rules are mapped and a material residual income stream, a legally identifiable recipient, a defensible source connection, and an administrable collection route are demonstrated.

2 METHODS

The method is doctrinal and documentary, supported by functional comparison rather than a systematic review. It proceeds in five ordered operations: (i) define the proposed taxpayer, income item, period, legal basis, and proposition to be proved; (ii) determine what the originating record actually states and for what legal purpose it was created; (iii) test correspondence of record subject, measured activity, period and accounting scope, and income recipient; (iv) require an identified documentary and legal bridge for every material mismatch; and (v) challenge the resulting inference and any proposed taxing mechanism with counterexamples and independent legal stopping rules.

Three analytical levels are kept separate throughout. The first is normative fact: what an enacted statute, treaty, model, or official instrument requires, permits, or reports. The second is inferential possibility: what a record with specified content could support if offered to prove a defined income-tax proposition. The third is administrative practice: what tax authorities have actually done in an audit, assessment, or dispute. REDATA is used primarily at the first and second levels. No administrative practice is inferred from the mere existence of statutory metrics, reporting duties, or publicly available indicators.

The international comparison is purposive and applies the same questions to each mechanism: legal status at the cutoff date; nexus; taxpayer; tax base and attribution; evidentiary requirements; and collection or relief architecture. India supplies an enacted domestic economic-nexus comparator and an enacted attribution rule (INDIA, 2025, 2026); its former Equalisation Levy supplies a historical gross-receipts comparator (INDIA, 2016); Amount A supplies a negotiated residual-profit allocation and relief architecture (OECD, 2023a, 2023b); and the UN Model and the July 2026 cross-border-services draft supply treaty-model and negotiating comparators (UNITED NATIONS, 2021, 2026a, 2026b). These source types are not treated as legally interchangeable.

Brazilian positive law supplies minimum discipline for the evidentiary screen. Articles 43 and 45 of the National Tax Code concern the income-tax taxable event and the holder of economic or legal availability; Article 97 reserves essential elements of taxation to law; Articles 142, 147 and 148 regulate assessment and specified evidentiary or valuation settings; and Article 196 concerns documentation of fiscal inspections (BRASIL, 1966). Complementary Law No. 225/2026 requires factual and legal grounds, adversarial process and full defense, and limits information requests to what is necessary; its general provisions entered into force on

publication, while Article 57 gives the federative entities up to one year to adapt their legislation (BRASIL, 2026a, arts. 3, 4, 57 and 58).

Complementary Law No. 236/2026 separately amended the National Tax Code and entered into force on publication. Article 208-B requires an assessment notice to rest on available evidence and to identify the assessed person, describe the facts, state the legal provision and connect the facts to it; Article 208-F requires reasoned decisions. Article 211-B gives the Union, states, Federal District and municipalities two years to update their legislation to the minimum criteria of Articles 208-A to 208-J and provides fallback application if they do not (BRASIL, 2026b). The amendments are therefore treated as enacted national procedural parameters, not as a claim that every pre-existing procedural rule was instantaneously displaced on September 4, 2026.

Administrative case law is used only as a caution about borrowed evidence. One CARF panel accepted evidence gathered elsewhere where the tax authority drew its own conclusions and adversarial participation was offered in the destination proceeding (CARF, 2020). The protocol developed below does not codify that precedent or reallocate burdens of proof. It asks the logically prior question whether the content of the record corresponds to the person, activity, period and income proposition being asserted.

The documentary cutoff is October 27, 2026. The review includes the National Tax Code, Complementary Laws Nos. 225 and 236 of 2026, Law No. 15,504/2026, India's 2025 Act and 2026 rule, the OECD Amount A instruments and current status materials, the United Nations Model Tax Convention 2021 and 2025, and the July 2026 draft UN protocol on cross-border services (BRASIL, 1966, 2026a, 2026b, 2026c; INDIA, 2025, 2026; OECD, 2023a, 2023b, [s.d.]; UNITED NATIONS, 2021, 2026a, 2026b). Later regulation, litigation, or negotiations may require updating the legal description, but do not alter the evidentiary distinction under study.

The documentary corpus was assembled by legal relevance to the stated questions, not through a prospectively registered systematic-review search. Primary materials were retained when they governed at least one comparative dimension - legal status, nexus, taxpayer, base or attribution, evidence, collection, or relief - or formed part of the Brazilian evidentiary framework. Secondary scholarship was retained when it supplied doctrinal framing, interpretation of a comparator, or a material counterargument. Superseded rules are identified as historical, nonbinding models and negotiating texts are identified by status, and materials after the October 27, 2026 cutoff are excluded. In the final source audit, primary legal

propositions were cross-checked against issuing-body or official legislative records where accessible, while secondary-source metadata were cross-checked against journal, publisher, DOI, or repository records. An internal source register recorded each cited source's documentary role, legal or publication status, version or date relevant to the cutoff, URL when available, and citation-to-reference correspondence; the register served as an audit device rather than as evidence of a systematic-review protocol. Because no prospective database-search protocol was registered, the article does not claim exhaustive literature coverage or systematic-review reproducibility; reproducibility is limited to the disclosed source set, versions, cutoff date, and comparison questions.

The study uses public legal documents and scholarship, not company accounts, sampled transactions, interviews, administrative cost data, or confidential audit files. The numerical exercise varies declared policy parameters and the transaction files are constructed counterexamples. The method can therefore test legal and evidentiary coherence, but it cannot establish revenue yield, welfare effects, audit-error reduction, inter-reviewer reproducibility, or the empirical superiority of a market nexus over withholding. Those questions require independent empirical validation. The study involves no human participants, animals, interventions, or confidential personal datasets; research-ethics committee approval is therefore not applicable to the documentary design.

3 RESULTS AND DISCUSSION

3.1 Remote nexus and competing legal techniques

A permanent establishment remains relevant where an applicable treaty makes physical business presence legally significant. The 2021 UN Model commentary distinguishes a website from physical equipment and examines whether a server is at the enterprise's disposal (UNITED NATIONS, 2021, commentary on art. 5). Independent cloud hosting therefore does not, by itself, place the provider's machines at the customer's disposal. Hardware may be evidence of a conventional presence when control and the other legal conditions are satisfied, but it cannot simultaneously prove customers, contracts, income entitlement, or the amount attributable to a market (JAMROŻY; MAJDOWSKI, 2022).

India demonstrates that a hardware-neutral domestic nexus is not novel. The Income-tax Act, 2025, generally effective from April 1, 2026, places significant economic presence within the statutory category of business connection. Section 9(9)(d) distinguishes transactions from

systematic solicitation or interaction with users, while Rule 13 sets thresholds of INR 20 million in payments and 300,000 users (INDIA, 2025, sec. 9(9); INDIA, 2026). Section 9(9)(f) limits deemed Indian-source business income to amounts reasonably attributable to the relevant operations, transactions, or activities; Section 9(9)(g) also addresses specified targeted-advertising and data-related income. The comparison is important precisely because nexus and taxable amount remain separate statutory questions.

India's former Equalisation Levy chose a different legal technique and tax base. The e-commerce branch ceased to apply to covered supplies or services on or after August 1, 2024, and the specified-services branch ended for services provided on or after April 1, 2025 (INDIA, 2016). The levy remains analytically useful because a charge on gross receipts can demand different information from a tax on net profit. Magalhães and Christians (2024) emphasize the continuing relevance of income-tax techniques. A common digital label therefore cannot substitute for identifying the legal base actually being taxed.

Amount A addresses allocation within a coordinated architecture rather than merely establishing remote contact. The 2023 draft Multilateral Convention and explanatory statement combine market sourcing, a residual-profit formula, double-tax relief, elimination of specified measures, administration, and tax certainty (OECD, 2023a, 2023b). On the cutoff date, the OECD continued to state that the convention was not yet open to signature (OECD, [s.d.]). Its headline 10% profitability reference and 25% allocation of residual profit are negotiated parameters, not empirical measurements of Brazilian value creation.

The UN Model supplies a different source-tax perspective. Article 12B of the 2021 Model addresses automated digital services and includes a qualified-profits alternative (UNITED NATIONS, 2021; KOFLER; OCHOA, 2025). The 2025 UN Model added Article 12AA on income from services, replacing former Articles 12A and 14, while retaining Article 12B (UNITED NATIONS, 2026b). Pistone and Musibi (2025) analyze the broader movement away from strict physical-presence criteria. These provisions are treaty-model options, not domestic charging rules.

The UN Framework Convention process remained unsettled in 2026. A Co-Lead's Draft Protocol on the Taxation of Income from Cross-Border Services dated July 20, 2026 remained a negotiating text rather than an adopted convention (UNITED NATIONS, 2026a). Its unsettled status is analytically useful because it confirms that service classification, source rules, relief, and administrability remain design choices rather than settled outcomes. The

functional comparison of the mechanisms examined in this article is summarized below (Table 1).

Table 1 – Functional comparison of remote-market techniques

Mechanism and legal status	Nexus and taxpayer	Base / attribution	Evidentiary and collection lesson
India significant economic presence; enacted domestic law	Transactions or systematic user engagement; nonresident with a statutory business connection	Business income reasonably attributable to relevant operations, transactions or activities	A legislature can define remote contact, but must still connect the amount to the correct person and provide administrable collection rules.
Former Indian Equalisation Levy; repealed for the relevant branches	Specified digital supplies or services under a separate levy	Gross receipts rather than net business profit	A simpler base changes the information problem; it does not answer who owns net income or whether a profit tax is preferable.
OECD Amount A; published multilateral proposal, not yet open to signature at cutoff	Market-revenue nexus for defined covered groups	Formulaic allocation of residual profit with sourcing, relief and certainty	Allocation parameters operate only inside a broader architecture; the formula cannot be detached from liable-entity, relief and administration rules.
UN Model 2025; nonbinding treaty model	Treaty-based source rights, including services provisions	Article-specific gross or qualified-profit approaches	Model provisions can redistribute treaty rights only if incorporated into an applicable treaty; they do not create domestic Brazilian liability.
UN 2026 services protocol; negotiating draft	Proposed source-based rights for cross-border services	Still-negotiated service categories, rates and relief	The unsettled design shows that nexus, base, classification, relief and administrability remain separate choices.

Source: Authors' comparative construction based on INDIA (2016, 2025, 2026), OECD (2023a, 2023b, [s.d.]), and UNITED NATIONS (2021, 2026a, 2026b).

Methodological note: the table compares legal functions, not institutional authority. Enacted domestic law, repealed legislation, treaty models and negotiating drafts are intentionally identified by status before their substantive features are compared.

The comparison yields a constrained result. Significant economic presence identifies contact; a gross-receipts levy chooses a base; residual-profit formulas allocate an amount; treaty models allocate rights between states if adopted; and collection rules determine whether a valid liability can be enforced. No one of these functions substitutes for the others. That separation becomes especially important when a regulator's precise infrastructure record is offered as proof of a different enterprise's income.

3.2 REDATA and cross-regime evidence

REDATA is an unusually revealing stress case because its legal subject and quantitative metrics are explicit. Law No. 15,504 of September 15, 2026 inserted the regime into Law No. 11,196/2005. The habilitation route concerns a legal person implementing a qualifying data-

center project; co-habilitation separately concerns qualifying suppliers (BRASIL, 2026c). Evidence about the operator or supplier cannot be silently reassigned to a foreign platform merely because that platform uses the infrastructure.

Article 11-B, § 1, item I ordinarily requires at least 10% of the effective processing, storage or data-handling supply installed with REDATA benefits to be made available to the domestic market, alongside other statutory commitments. For qualifying projects in the North, Northeast and Center-West, § 7 reduces the commitments in items I and V by 20%. These are conditions attached to an infrastructure incentive; they do not measure a customer's advertising receipts or taxable profit (BRASIL, 2026c).

The routes for satisfying the domestic-supply commitment expose the evidentiary problem. Under Article 11-B, § 4, the commercial route is measured by the ratio between the operator's annual gross revenue from qualifying REDATA data-center services supplied to the domestic market and its annual gross revenue from those services overall. The statute also allows uncompensated supply to specified institutions or public authorities; that route is supported by a consolidated annual report and a conclusive opinion of an independent auditor, and the statute authorizes a regulatory multiplier for the value counted. Section 6 permits substitution of the domestic-supply commitment through additional qualifying research, development, and innovation investment (BRASIL, 2026c). An exact ratio, an audited donation record, or documented research expenditure can therefore be perfectly valid evidence of REDATA compliance while saying nothing about a foreign customer's platform revenue.

Availability must also be distinguished from legal meaning. A statutory metric does not by itself create a transaction-level reporting instrument. Article 11-B, § 10 requires publication of a sustainability report, while § 11 authorizes the Executive to create a repository for publicly disclosed sustainability indicators (BRASIL, 2026c). The analysis therefore asks four separate questions: whether a metric exists; whether a record must be created; whether it must be disclosed or made available; and whether its contents actually correspond to the proposed taxpayer and receipt. No transaction-level customer dataset is assumed from the existence of a numerical commitment.

Evidentiary congruence is defined here as documented and contestable correspondence between a specified income-tax proposition and four characteristics of the record offered to establish it: (1) the legal subject described by the record; (2) the activity measured; (3) the relevant period and accounting perimeter; and (4) the person legally entitled to the alleged

income. The first gate asks whose conduct the originating record documents; the fourth asks who acquired the income. Their separation is especially important in corporate groups and outsourcing chains. The four review dimensions are summarized below (Table 2).

Table 2 – Evidentiary congruence: four review gates

Gate	Question to establish	Why REDATA alone is insufficient
1. Record subject	Whose activity does the originating record document?	The data-center operator or co-habilitated supplier is not necessarily the nonresident advertising or platform vendor.
2. Measured activity	Does the recorded metric measure the income stream asserted?	Capacity, sustainability, research spending, and the operator's own service revenue do not quantify a customer's advertising receipts.
3. Period and scope	Are periods and accounting boundaries reconcilable?	An annual operator ratio cannot be mapped to another entity's income without an explicit reconciliation of period, entity and transaction perimeter.
4. Income recipient	Which legal person acquired the alleged receipt?	Contracts, invoices, ledger entries and relevant group arrangements may be needed to establish income entitlement.

Source: Authors' analytical construction based on REDATA (BRASIL, 2026c, art. 11-B), the National Tax Code (BRASIL, 1966, arts. 43, 45, 97, 142, 147, 148 and 196), Complementary Law No. 225/2026 (BRASIL, 2026a), and Complementary Law No. 236/2026 (BRASIL, 2026b).

Methodological note: a mismatch does not prove that the tax proposition is false. It means that the originating record cannot carry that proposition without identified corroboration and, where required, a valid legal bridge.

For classification, a mismatch is material when leaving it unresolved could change the identified taxpayer or income recipient, the income stream or transaction, the taxable period or accounting perimeter, or whether the recorded metric measures the proposition asserted. A documentary bridge is sufficient for gate-level correspondence only when it is traceable to the same person or transaction, verifiable and contestable, reconciles the relevant period and accounting scope, and does not merely restate the originating record. If a bridge is identified but not yet verified, the outcome is conditional correspondence; if a material mismatch remains without such a bridge, the originating record is noncorresponding for that proposition. For example, an operator invoice naming the platform may cure a subject linkage while leaving advertising revenue and income entitlement unresolved; an annual operator metric cannot support a monthly receipt without an explicit period reconciliation. Minor clerical differences that do not affect person, transaction, period, or income entitlement are not material.

3.3 The incremental contribution of the four-gate protocol

The protocol does not claim that relevance, identification of the taxpayer, temporal correspondence, or income entitlement are new legal ideas. Its incremental contribution lies in the sequence, decomposition, and required output. The benchmark is deliberately conventional:

an ordinary relevance-and-sufficiency inquiry may correctly describe a REDATA record as relevant yet incomplete because it shows Brazilian infrastructure use. The four-gate protocol must go further. It requires the tax proposition to be defined first; separately classifies any defect as one of record subject, measured activity, period and scope, or income recipient; identifies the document or legal relationship capable of curing each material defect; and refuses reliance when a material mismatch remains uncured. The claimed novelty is therefore not outcome exclusivity - ordinary evidentiary doctrine may ultimately reach the same conclusion - but a standardized audit trail for cross-regime inference. The change from record-first reasoning to claim-first testing makes the location of the inferential failure, the proposed cure, and the stopping point reviewable before allocation or collection is attempted.

The second contribution is the documentary-bridge requirement. A failed gate cannot be repaired by the precision, official origin, or audit status of the source record. The reviewer must name the additional document or legal relationship capable of reconciling the mismatch - for example, a customer contract linking the platform to the infrastructure service, advertiser invoices identifying the receipt, ledger entries fixing the accounting period, or intercompany agreements and accounts establishing which entity acquired the income. This converts an intuitive objection ('the evidence is not enough') into an auditable statement of what is missing and why.

The third contribution is asymmetric stopping. Failure of a material gate defeats reliance on that record as proof of the defined proposition, subject to independent evidence. Success at all four gates does not prove enforceable tax liability because a charging rule, defensible attribution, lawful taxable period, relief mechanism, procedural safeguards, and a collection route remain independent constraints. This asymmetry supplies an explicit analytical refusal condition, not an empirical claim of falsifiability. In the constructed files, the protocol can require refusal of an inference even where the originating record is precise, official, and audited, while it can never manufacture a charging rule. Whether independent reviewers reproduce the classifications, or whether use of the protocol improves audit accuracy or litigation outcomes, is an empirical question not tested here. The resulting decision rule is summarized below (Table 3).

Table 3 – Decision matrix for cross-regime evidence

Outcome	Four-gate condition	Decision rule
Correspondence	All four gates are supported by traceable evidence and no unresolved material mismatch remains.	The record may support the defined factual proposition. Taxing authority, attribution, timing, relief and collection remain independent tests.
Conditional correspondence	One or more gates depend on identified corroboration capable of reconciling subject, activity, period/scope or income recipient.	The originating record cannot stand alone. Obtain and document the specified bridge before relying on the inference.
No correspondence	A material gate fails and no contestable documentary bridge connects the record to the proposition.	Reject that record as proof of the proposition; seek independent evidence, narrow the claim, or decline it.
External legal or administrative stop	The evidentiary gates may be satisfied, but a charging rule, defensible attribution, lawful period, relief rule, procedural condition or enforceable collection route is missing.	Do not infer enforceable liability from evidence alone. Resolve the independent legal or administrative constraint first.

Source: Authors' analytical construction based on BRASIL (1966, arts. 43, 45, 97, 142, 147 and 148), BRASIL (2026a, 2026b), and the REDATA record structure in BRASIL (2026c, art. 11-B).

The first three outcomes classify the evidentiary relationship between a record and a defined tax proposition. The fourth is an external stopping rule: correspondence is necessary for the factual inference, but cannot replace the legal architecture of taxation.

The protocol also clarifies the status of treaty assumptions. Brazil's Federal Revenue Service listed the country's income-tax treaties as updated on August 28, 2026, and the United States was not among the listed partners (RECEITA FEDERAL DO BRASIL, 2026). Brazil and the United States nevertheless have a tax-information-exchange agreement promulgated by Decree No. 8,003/2013 (BRASIL, 2013). That instrument can facilitate information cooperation but is not an income-tax convention allocating taxing rights over business profits. Treaty status must therefore be checked by residence, tax, income category, period, and instrument rather than inferred from a country label.

The absence of an applicable income-tax treaty does not itself create a taxable event. Article 43 of the National Tax Code defines acquisition of economic or legal availability of income or earnings, Article 45 identifies the holder of that availability as the taxpayer subject to statutory responsibility rules, and Article 97 reserves essential elements of taxation to law (BRASIL, 1966). The Constitution assigns income-tax competence to the Union and subjects taxation to legality and temporal constraints (BRASIL, 1988, arts. 150 and 153). A statutory market nexus would therefore need a domestic rule connecting a defined nonresident person and covered income to Brazil; audience value, infrastructure use, or Article 43 alone cannot supply that missing connection.

3.4 From market contact to taxable income

In the non-treaty setting examined here, a Brazilian market-nexus statute would not discover a fixed place hidden in software; it would create a domestic connection based on specified market conduct. The term 'virtual permanent establishment' can remain useful as shorthand for the literature (OLIVEIRA et al., 2026), but the legal technique is better described as a statutory market nexus. That terminology prevents a domestic rule from being confused with treaty permanent-establishment doctrine.

A market nexus requires an articulated jurisdictional justification but does not itself determine profit. Schön (2018) cautions that economic allegiance and the benefit principle do not mechanically divide income between production and destination states; Elliffe (2022) develops a stronger case for source and market taxation in the digital age. The design question is therefore sequential: identify the person and covered transaction, establish material market contact, source the relevant receipt, attribute only the amount legally assignable to that person, and provide relief and collection rules.

Indicators of deliberate, sustained, and material commercial engagement could include recurring Brazilian revenue, targeted customer acquisition, market-directed contracts, local payment arrangements, and documented adaptation to Brazilian customers. User counts should be treated cautiously because accounts, persons, devices, automated traffic, and physical location do not map perfectly. India's 300,000-user threshold is a domestic legislative choice, not evidence that the same number is appropriate for Brazil (INDIA, 2026). Revenue is generally a stronger scale measure when it can be tied to a defined transaction and income holder. Thresholds should therefore follow transaction mapping rather than substitute for it.

Two payment chains illustrate why. If a Brazilian advertiser pays a foreign service provider, existing source-payment and withholding rules must be tested first, including Article 7 of Law No. 9,779/1999 where its conditions and the legal characterization of the payment are satisfied (BRASIL, 1999). A different problem arises where a foreign advertiser pays a foreign platform for advertising directed to Brazilian users and no Brazilian payer remits the remuneration. The second chain may justify legislative study, but it does not establish that current law already taxes the receipt. The income recipient, source rule, characterization, existing treatment, and collection path must be identified first (FREIRE, 2021; MAGALHÃES; CHRISTIANS, 2024).

Finding nexus still leaves profit attribution open. Amount A's residual mechanics are used here only as a sensitivity device. Let P be adjusted pretax profit for one consistently defined covered business, R its third-party revenue, BR the portion reliably sourced to Brazil, r a selected reference return on revenue, and a the fraction of residual profit allocated across markets. All variables must use the same accounting period and perimeter. The diagnostic expression is:

$$A = a \times \max[0, P - rR] \times (BR/R)$$

The formula requires $R > 0$, $0 \leq BR \leq R$, $r \geq 0$, and $0 \leq a \leq 1$. It follows the headline mechanics of the Amount A explanatory statement without importing that proposal's full legal package (OECD, 2023a). For a constructed business with BRL 1 billion in third-party revenue, BRL 200 million in adjusted pretax profit, and BRL 100 million in reliably sourced Brazilian revenue, r = 10% and a = 25% produce BRL 2.5 million of allocated profit. Raising r to 15% reduces the result to BRL 1.25 million; holding r at 10% and reducing a to 15% produces BRL 1.5 million; if P falls to BRL 80 million, the allocation is zero. These amounts are sensitivity outputs, not estimates of Brazilian taxable income.

Three independent errors can invalidate an apparently correct allocation. A perimeter error occurs if P, R, and BR do not refer to the same entity, segment, and period. An attribution error occurs if Brazilian revenue is reliably sourced but the residual profit being allocated economically or legally belongs to another group entity. A double-counting error occurs if the amount overlaps income already brought into a Brazilian tax base or otherwise relieved under applicable law. The exercise therefore demonstrates sensitivity to policy choices; it does not validate the selection of r or a, prove that residual profit belongs to Brazil, or identify the liable person.

Information demands must remain proportionate to the proposition tested. The National Tax Code's inspection and secrecy rules, constitutional privacy and due-process protections, and the Code of Taxpayer Defense constrain how information may be requested and used (BRASIL, 1966, arts. 195 and 198; BRASIL, 1988, art. 5; BRASIL, 2026a). Lawful access and evidentiary sufficiency remain distinct: information may be lawfully obtainable yet fail the four gates. A new nexus would not itself justify unrestricted requests for technically sensitive or unrelated information.

Overlap must be tested by person, income, jurisdiction, and period. Withholding can reach some payments while consumption taxes address a different base; a unilateral income-

tax charge cannot compel another state to grant relief. Any credit, exemption, offset, or ordering rule would require appropriate legal authority. The design must also specify when nexus begins and ends; crossing a threshold during an observation window cannot retroactively authorize taxation of a closed period (BRASIL, 1988, art. 150).

Collection is the final realism test. The Brazil-United States tax-information-exchange agreement can support information cooperation, but it does not itself create a general foreign-debt recovery mechanism (BRASIL, 2013). The Convention on Mutual Administrative Assistance in Tax Matters contemplates recovery assistance, yet Brazil's reservation under Article 30(1)(b) excludes an obligation to provide such assistance for tax claims generally (BRASIL, 2016; COUNCIL OF EUROPE, 2026). Registration and information exchange do not create attachable assets or a lawful collecting agent. A viable design therefore needs a realistically enforceable channel, not merely an amount assessable on paper.

3.5 Adversarial testing and worked applications

The first adversarial test is hardware relocation. Suppose a platform keeps the same Brazilian customers, contracts, and receipts but moves independent cloud processing from Brazil to another country. Conventional permanent-establishment analysis may change if control over a relevant place changes (UNITED NATIONS, 2021, commentary on art. 5). A statutory market nexus should not change for that reason alone. Conversely, a Brazilian data center serving only foreign markets cannot create Brazilian market income for each foreign customer using it. The test isolates infrastructure from market conduct.

The second test is audience without attributable monetization. India's law separates user-based significant economic presence from the income reasonably attributable to relevant transactions or activities (INDIA, 2025, sec. 9(9)(d), (f)). A large Brazilian audience can establish contact without identifying a taxable amount. If foreign receipts cannot be identified and sourced on reviewable evidence, the claim should be narrowed or declined rather than reconstructed from user volume.

The third test is a three-entity group. Company A operates the interface; Company B invoices advertisers; Company C owns key intangibles and records most residual profit. A formula that imports consolidated profit but assesses A merely because A is operationally visible fails the income-recipient gate unless a legal rule and supporting accounts connect the assessed amount to A. Group association is not income entitlement. This is the point at which

a generic statement that 'the group earns from Brazil' must be converted into a proposition about a specific legal person.

The first constructed REDATA file makes the contrast concrete. Brazilian operator O reports BRL 12 million in annual domestic revenue and BRL 80 million in total revenue from REDATA-benefited data-center services, an illustrative 15% commercial ratio under Article 11-B, § 4 (BRASIL, 2026c). Foreign platform B uses O's capacity, while a foreign advertiser pays B for an advertisement directed to Brazilian users. O's record is precise and relevant to O's statutory commitment, but it does not identify the advertising contract, price, payment recipient, or attributable profit. For a tax proposition about B resting only on O's file, the subject, measured-activity, and income-recipient gates fail. The protocol therefore classifies the record as noncorresponding proof of that proposition, rather than merely 'weak evidence'.

The second file adds B's signed advertiser contract, invoices, ledger entries showing a BRL 4 million receipt in the same year, a reconciliation of placements to the relevant market, and group documents identifying which entity recognizes the income. Those materials can repair the identification and period mismatches and may move the file to conditional or full correspondence, subject to verification. They still do not prove that the entire BRL 4 million arose in Brazil, establish B's net profit, prevent double counting, supply a charging rule, or create a collection channel. The exercise therefore demonstrates the protocol's incremental output: it identifies both the documentary bridge that cures a mismatch and the independent legal questions that remain after the cure.

A borderline variant shows why classification must be proposition-specific. Assume that O's invoice identifies B as the infrastructure customer; B's advertiser contract and ledger establish that B acquired a BRL 4 million annual advertising receipt; campaign records reliably associate 70% of the relevant placements with Brazil but leave 30% unreconciled; and an intercompany agreement requires B to pay C a royalty for intangibles without assigning the advertiser receivable to C. For proposition P_1 - that B acquired the BRL 4 million receipt in year Y - the subject, period, and recipient bridges support correspondence, subject to ordinary verification. For proposition P_2 - that the entire BRL 4 million is attributable to Brazilian-market placements - the unresolved 30% is material. If a specified, verifiable reconciliation source is still pending, the full-amount proposition is conditional; if no such bridge exists, the record supports only the documented location proposition and must not be extrapolated to the remainder. Neither result, by itself, establishes taxable profit or a legal sourcing rule. For

proposition P3 - that Brazil may assess income tax on B for the amount - even complete evidentiary correspondence reaches the external legal stop unless an applicable charging and attribution rule exists. The same file therefore yields different decisions because the defined proposition, not the apparent strength of the record in the abstract, controls the test.

A payer control further separates existing law from proposed reform. If a Brazilian advertiser instead pays B for the defined service, applicable withholding rules must be examined before a new nexus is proposed (BRASIL, 1999). The same technology can produce different legal outcomes because the payer, income characterization, taxpayer, and collection mechanism differ. Comparing automated and nonautomated services adds an equality control: Article 12AA of the 2025 UN Model addresses services generally, while Article 12B remains tailored to automated digital services, and the 2026 draft protocol confirms that classification and tax-base choices remain under negotiation (UNITED NATIONS, 2021, 2026a, 2026b). A Brazilian rule singling out automation would require an articulated justification beyond the label itself.

The final adversarial test is enforceability. Assume that every substantive nexus and evidentiary condition is met, but the nonresident has no Brazilian payer, property, or legally responsible representative. Brazil's Article 30(1)(b) recovery reservation remained published at the cutoff date (COUNCIL OF EUROPE, 2026). The result can be a valid assessment without a general recovery route under that Convention. Any impact study must therefore distinguish tax assessed in principle from tax realistically collectible.

The decision sequence is consequently restrictive. First, map a material income stream left unreached by existing law and identify the nonresident that legally earned it. Second, apply the four gates and document every reconciliation, including the prevention of double counting. Third, establish a domestic charging rule and a defensible, time-bounded attribution and relief design. Fourth, satisfy the procedural law applicable to the assessment and verify a realistic lawful collection route. Only after those conditions are met should an empirical impact study calibrate thresholds or rates. If they are not met, narrower withholding clarification, information reporting, treaty negotiation, or targeted intermediary duties should take priority where legally appropriate (FREIRE, 2021; HEBOUS et al., 2026; MAGALHÃES; CHRISTIANS, 2024).

4 CONCLUSION

The article's central result is a disciplined limit on inference. Precise, audited, and legally valid infrastructure records can prove the proposition for which they were created while remaining insufficient to prove another enterprise's income-tax liability. REDATA makes the problem visible because its statutory metrics concern an infrastructure beneficiary, whereas the income-tax proposition may concern a different nonresident platform, a different receipt, a different accounting perimeter, and a different legal period. The four-gate protocol forces those differences to be stated rather than absorbed into the apparent precision of the source record.

The incremental contribution is therefore procedural and auditable rather than empirically validated. It begins with a defined tax proposition, tests record subject, measured activity, period and scope, and income recipient, requires an identified documentary bridge for every material mismatch, and produces explicit correspondence, conditional-correspondence, or refusal outcomes. Relative to a generic relevance-and-sufficiency inquiry, its added value is the mandatory decomposition of the mismatch, identification of the possible cure, and statement of the stopping condition. It also imposes an asymmetric rule: successful evidence can support a factual inference, but cannot create a missing charging rule, attribution rule, temporal basis, relief mechanism, procedural condition, or collection channel. The constructed files illustrate that proposition-specific discipline; empirical validation of inter-reviewer reproducibility and real-world performance remains a separate research task.

The comparative analysis supplies the policy restraint. India shows that remote nexus can be legislated; its former Equalisation Levy shows that a different base changes the information problem; Amount A shows that allocation depends on a surrounding architecture; the UN Model supplies treaty options; and the 2026 UN protocol remained under negotiation at the cutoff date. None of those instruments can be imported piecemeal as Brazilian taxing authority. A statutory market nexus merits consideration only after empirical mapping establishes a material residual income stream, its true nonresident recipient, reviewable Brazilian sourcing, a nonduplicative taxable base, applicable procedural safeguards, and an enforceable collection route. The next research step is therefore an impact study using appropriately protected transaction data and compliance-cost evidence. The protocol succeeds as much when it justifies refusal as when it supports further inquiry.

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