

For the kind attention of:

Mr. Ramy Youseff, Chair of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Cc: Permanent Representatives and Observers to the UN in New York

21 June 2024

Subject: Joint civil society and trade unions comments on zero draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Your Excellency,

We, the undersigned over **x** civil society organizations and trade unions, strongly welcome the UNGA Resolution 78/230, including the work to develop a UN Framework Convention on International Tax Cooperation (FCITC). Furthermore, we appreciate the opportunity to submit comments on the zero draft of the Terms of Reference of the FCITC.

Please find below a joint submission on behalf of the Global Alliance for Tax Justice (GATJ) and all of the undersigned organizations and trade unions. GATJ facilitates the CS FfD Mechanism's Tax Justice Workstream with the support of one of its members, the European Network on Debt and Development (Eurodad). GATJ is a Southern-led global coalition in the tax justice movement.

We remain at your disposal if you would like to receive more information, or would be very happy to meet to discuss this issue further.

Yours sincerely,

The Global Alliance for Tax Justice, tax justice workstream coordinator of the Civil Society Financing for Development Mechanism (www.cssofarffd.org)

Comments on the zero draft Terms of Reference

Overall comments

We welcome the zero draft Terms of Reference (ToR) and find it to be a good basis for negotiations. We believe it covers the **main overall components** necessary to deliver the fair, ambitious and efficient UN Framework Convention on International Tax Cooperation (FCITC), as foreseen in Resolution 78/230, including objectives, principles, commitments, protocols and key institutions.

The suggested **timeline** in the zero draft (paragraph 16) properly reflects the urgency of the matter – not least bearing in mind that international tax abuse is costing governments hundreds of billions of dollars in lost tax income every year. The deeply pressing need for public resources, including to fulfill the international commitments related to development, human rights and environmental protection, must make the timely finalization of the FCITC an issue of highest priority.

The zero draft brings the negotiations an important step forward, and allows Member States the basis needed to deliver on the Ad Hoc Committee mandate, namely Resolution 78/230. Some Member States that voted against the resolution at the end of 2023 have subsequently put forward proposals that either fall outside of the scope of the mandate (ex. changing the decision-making rules of the UN General Assembly), or outright go against it (ex. proposals for introducing a narrower scope than contained in the resolution). The Ad Hoc Committee is on a tight timeline to complete its mandate, and the available time should be focused on moving forward towards this aim. Therefore, **we welcome the fact that proposals that fall outside of, or go against, the mandate of the Ad Hoc Committee have not been included** in the draft ToR for the FCITC.

Regarding **decision-making procedures**, we welcome a discussion about such procedures under the FCITC as a part of the negotiation of the convention. This issue is usually included within framework conventions under the articles relating to the Conference of the Parties, Amendments and Adoption of protocols. Therefore, we find, and support, that this issue is included in the zero draft.

In the text below, we have outlined our specific inputs. Furthermore, as a **summary of our high priority issues**, we would like to highlight the following:

Essential elements to maintain:

- **Holistic objectives** with clear links the overall goal of sustainable development and fairness of international tax rules;
- **Clear principles**, including a principle that links the tax sovereignty of States to the obligation to respect the same right of other States;
- **Substantive elements**. We welcome this section, and believe it should be expanded to cover, at the minimum, all issues mentioned as potential future protocols;

□ **Key tax-related issues**, including:

- Fair allocation of **taxing rights** and equitable taxation of **multinational enterprises**;
- Effective taxation of **high-net worth individuals**;
- **Illicit financial flows**
- Ensuring that tax measures contribute to addressing **environmental challenges**.

Elements that should be added:

- The principle of **special and differential treatment** of developing countries;
- The goal of **reducing inequalities** within and among countries (SDG10);
- A principle and commitment to promote **progressive tax systems**, in line with paragraph 22 of the Addis Ababa Action Agenda;
- Tax and **gender equality** to redress the disproportionate tax burden placed on women through regressive/ consumption taxes;
- Taxation and **extractive industries**;
- Specific commitments on transparency, including effective and inclusive **Automatic Information Exchange**, public **Beneficial Ownership** and **asset** registers, comprehensive public **Country by Country Reporting** and public transparency around **tax incentives**.
- **Participation of civil society**;
- Exploring the option of **international tax initiatives** as innovative sources of financing for development and environmental protection;
- Clear **links to other key global commitments** of States, including those contained in the UNFCCC, CBD, CEDAW, the SDGs and the UN Human Rights Framework, and related commitments to international resource mobilization.
- The text relating to **human rights** should be amended to include all relevant aspects of the issue and included in both the section on principles and commitments. Furthermore, the section on human rights should be detached from the section on “*tax payers*”, not least since this term includes corporations, which are duty bearers – not rights holders.

Specific comments

Objectives (paragraph 7)

We suggest:

Maintaining: Point a.

Amending points b and c:

“b. Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State and emphasizing that taxation is a key tool for governments to fulfil international goals, obligations and commitments, including those relating to human rights, environmental protection, equality, including gender equality, and sustainable development;”

“c. Establish an inclusive, fair, transparent, efficient, equitable, comprehensive, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing inequalities within and among countries, tax-related illicit financial flows and other challenges to strengthening domestic and international resource mobilization.”

Principles (paragraphs 8-9)

We suggest:

Maintaining: All elements currently listed.

Amending the following principles:

- “Be universal in approach and scope and should fully take into account the different needs, priorities, and capacities of all countries, in particular developing countries in special situations;*
- “Take a holistic, sustainable development perspective aligned with human rights, including the right to development, that covers in a balanced and integrated manner economic, social and environmental policy aspects, and supports states to fulfill their obligations to promote universal respect for, and observance of, all human rights and fundamental freedoms;*
- “Ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable development and enables the full realization of human rights;*
- “Require transparency and accountability of all taxpayers, and full cooperation in complying with tax laws. while respecting the rights to privacy and other fundamental human rights. States must also ensure the rights of all people to access information of importance to assess the fairness, equitableness, progressivity, transparency and effectiveness of their domestic tax system.”*

Adding principles related to:

- Special and differential treatment** of developing countries. Specifically, we suggest moving the following text from the section on Capacity building to the section on Principles: “*Recognizing that respect for tax sovereignty implies that inclusive and effective participation in international tax cooperation requires procedures that take into account the different needs, priorities and capacities of all countries to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference.*”
- Underlining that the **participation of civil society** is essential;
- Recognizing that the costs of pollution and environmental damage should be borne by those causing it, not those suffering its impacts (**polluter pays principle**), as well as the **common but differentiated responsibilities and respective capabilities** of countries in relation to addressing international environmental challenges;
- Ensuring that tax systems are **progressive** and serve to reduce inequalities within and among countries;
- Underlining the link between tax policies and the mission of mobilizing financing to fulfil **international goals, obligations and commitments**, including those related to human rights, gender equality, quality public services for all (including health and education), promotion of well-being and quality of life, sustainable development and environmental protection, including climate action, as well as increasing equality within and between countries.

Substantive elements of the Framework Convention (paragraph 10)

We suggest:

Maintaining: the commitments related to:

- Effective taxation of **high-net worth individuals**;
- Fair allocation of taxing rights**, including equitable **taxation of multinational enterprises**.

Maintaining and amending the following commitments:

- “**Transparency and exchange of information for tax purposes, including effective and inclusive automatic information exchange, public registers of beneficial owners, comprehensive public country by country reporting and public transparency around tax incentives.**”

- “Ensuring that tax measures contribute to addressing **environmental challenges and promoting global public goods**”

Adding commitments related to:

- Issues that are missing:
 - A commitment to provide for full **cooperation**, mutual assistance and support between states to ensure fair and effective taxation;
 - A commitment to ensuring fair and effective taxation of **extractive industries**. This is recognized in Resolution 78/230 and should be included in the ToRs with a view to finding effective solutions, while giving special attention to the challenges faced by developing countries. Furthermore, consideration should be given to the rights and needs of communities impacted by extraction, the need to reduce inequalities and environmental sustainability.
 - A commitment to promote **progressive tax systems**, in line with paragraph 22 of the Addis Ababa Action Agenda, and linked to a reconfirmation of the obligations of states to ensure non-discrimination and substantive equality and to use the maximum available resources, including through international cooperation, to ensure the fulfillment of **human rights**. This includes the extraterritorial duties of states to ensure that their actions do not lead to violation of people’s rights abroad.
 - A commitment to ensuring that tax systems promote **gender equality** through eliminating regressive taxation policies that disproportionately affect women, ensuring maximum available resources for the fulfillment of gender equality and ensuring the full and effective participation of women at all levels of tax policy making;
 - Exploring the issue of **international tax initiatives** as innovative sources of finance, including for development and to address environmental and climate challenges.
- Issues mentioned as protocols, but not as commitments:
 - Taxation of the **digitalized and globalized economy**;
 - Taxation of income derived from **cross-border services**;
 - Tax related **illicit financial flows**;
 - **Mutual administrative assistance on tax matters**;
 - A commitment to ending **harmful tax practices**.

These elements do not all have to be separate commitments, since some issues can be grouped together. However, including them as commitments in the Convention will be important for providing clear mandates for the future protocols.

The section on commitments should also reflect the principle of **special and differential treatment** of developing countries. For example, future global standards

on automatic information exchange should incorporate a transition period in which developing countries can receive information on a non-reciprocal basis.

Capacity building

We welcome paragraphs 11 and 12, but suggest that the text in paragraph 11 should be moved to the section on Principles.

Structural elements of the Framework Convention (paragraph 13)

We suggest:

Maintaining: paragraph 13 as is.

Adding:

13.bis The framework convention should include the following subsidiary bodies: the UN Expert Committee on International Cooperation in Tax Matters; a UN public registry for corporate transparency and a global asset register.

Specific priority issues to be addressed in early protocols

For paragraphs 14-15 we suggest moving “*tax measures on environmental and climate challenges*” and “*harmful tax practices*” from paragraph 15 to 14, in recognition of the fact that these must be high priority issues. Furthermore, we suggest moving “*prevention and resolution of tax disputes*” from paragraph 14 to 15.

Approaches and time frame for negotiation

We welcome paragraph 16, including the suggested **timeline**. Furthermore, we suggest adding the following reference to the contribution of civil society, in line with the wording of Resolution 78/230:

“*16. The framework convention should be elaborated by a Member State-led negotiating committee, with the contribution of international organizations and civil society, in accordance with established practice. (...)*”

We welcome paragraphs 17-20 and suggest keeping them as they are.

Resources to support the work of the negotiating body (paragraphs 21-22)

We suggest amending the paragraphs as follows:

“*21. The Secretary-General should be requested to provide the intergovernmental negotiating committee with the necessary facilities and resources to support their work, including through the establishment of a Trust Fund for Participation of developing countries in the negotiations.*”

“22. Member States and other relevant stakeholders in a position to do so should be encouraged to assist in ensuring the full and effective participation of developing countries, including in particular the least developed countries, in the negotiation of the framework convention, including by making contributions to the Trust Fund for Participation covering travel and local expenses and through capacity-building.”