



**For the kind attention of:**

António Guterres, Secretary General of the United Nations

17 March 2023

**Subject: Implementation of UN General Assembly resolution 77/244 – written inputs to the Tax Report 2023 on *Promotion of inclusive and effective tax cooperation at the United Nations***

Your Excellency,

We thank you for the opportunity to submit inputs to the 2023 Tax Report.

The European Network on Debt and Development (Eurodad) fully endorses the submission made by the Civil Society Financing for Development Mechanism. Furthermore, we would like to submit some more specific points on the issue of options for strengthening the inclusiveness and effectiveness of international tax cooperation.

The submission below builds on the Proposal for a United Nations Convention on Tax, which was published by the Global Alliance for Tax Justice and Eurodad in March 2022.<sup>1</sup>

We would like to underline the importance of looking at the broader spectrum of multilateral UN instruments – beyond the areas of current instruments related to tax, trade and related issues – when analysing options for strengthening international tax cooperation. Below, we outline some of the elements that we believe are currently lacking in international tax governance, as well as some examples of UN instruments and frameworks that we have found helpful when developing proposals for how to fill these gaps.

As explained in our Proposal for a UN Convention on Tax, we believe that the most suitable instrument to resolve the problems in relation to international tax cooperation would be a UN Framework Convention on Tax. This is firstly due to the fact that the structures that are currently missing are of a quite fundamental nature – i.e., the overall framework is missing. Secondly, a Framework Convention would allow governments to take a stepwise approach whereby some core parts of the international system could become operational while more detailed agreements are still being negotiated.

## **Principles for international tax cooperation**

The area of international taxation is rich in terms of number of treaties (in particular bilateral ones), but poor in terms of clearly defined principles for international tax cooperation. Defining such principles through a UN Framework Convention on Tax would be a key added value of the UN.

In addition to considering what currently exists within the area of taxation, we believe that important examples of international principles can also be found in other instruments such as the Rio Conventions. For example, we find that Principle 2 of the Rio Declaration on Environment and Development<sup>2</sup> is an interesting case that shows how the sovereign rights of states can be matched with obligations of states to avoid undermining the same rights of other states. We find that this is relevant in the context of the sovereign right of every State to decide on the policies and practices of its domestic tax system, and the obligation of each State to avoid causing harm to the tax bases or systems of other States.

In terms of principles concerning civil society participation in internal processes, we also found Article 4.7 of the World Health Organization (WHO) Framework Convention on Tobacco Control to be highly relevant.<sup>3</sup>

## **Objectives**

Similar to what is the case for principles, we also lack clearly defined objectives for intergovernmental work on tax, and this is another area where a UN Framework Convention on Tax could bring important added value. In our proposal for such a convention, we have suggested a three-layered objective statement which encapsulates the central tax-related international questions that require intergovernmental cooperation, commitments and action. These are: international tax cooperation; ensuring that tax systems are fair, equitable, progressive, transparent and effective; and combating tax-related illicit financial flows.

We have also suggested that the objectives on international tax matters should be linked to the fulfillment of other key international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the achievement of the Sustainable Development Goals.

In the proposal for a three-layered objective, we have drawn on examples from Article 1 of the UN Convention on Biological Diversity<sup>4</sup> and Article 1 of the UN Convention Against Corruption.<sup>5</sup>

## **General obligations**

Another area where a UN Framework Convention on Tax could add important value is the issue of defining the key obligations of governments on international tax cooperation in a clear and coherent way. In our proposal for a UN Convention on Tax, we have drawn on examples of articles defining general obligations, which can be found in the WHO Framework Convention on Tobacco Control<sup>6</sup> and the draft convention on the right to development, where the proposed Article 8 outlines “General obligations of States Parties”.<sup>7</sup>

In our proposal for a UN Convention on Tax, we have, for example, included state obligations regarding transparency, cooperation and in terms of ensuring consistency between international commitments and bilateral tax treaties.

We have also compared our proposal to the OECD's multilateral instrument on Base Erosion and Profit Shifting (BEPS)<sup>8</sup> and the OECD's BEPS Action 6 on Treaty Abuse<sup>9</sup>, and explained why we believe these instruments actually increase, rather than reduce, the complexity and incoherence of the international tax system (see Proposal for a United Nations Convention on Tax, comments on Article 4 and Article 29).<sup>10</sup>

### **Institutional architecture**

The UN remains the only universal body where all countries participate as equals, and the consensus adoption of Resolution 77/244 marks a historic turning point in international tax cooperation. One key task that must now be resolved is the fact that we currently do not have an inclusive intergovernmental body that allows all countries to participate on a truly equal footing in decision-making on global tax issues. We believe that the obvious solution to this problem would be to establish a Conference of the Parties as part of a UN Framework Convention on Tax. As mentioned in our proposal for such a convention, this approach would mirror the setup that the UN has established on a broad range of other issues.

In our proposal, we have also suggested that the existing UN Expert Committee on International Tax Cooperation should be maintained, but brought in as a subsidiary body under a UN Framework Convention on Tax. Such an institutional design would ensure that the UN's work on tax would be informed by technical expertise and in-depth understanding of tax related issues. In this proposal, we have drawn on examples from the Rio Conventions, which all benefit from having subsidiary technical bodies as part of their institutional architecture.<sup>11</sup>

In this context we would also like to caution against introducing the old proposal of upgrading the existing UN Expert Committee to an intergovernmental body. We stress that this proposal is no longer relevant since we now have an intergovernmental UN process mandated under Resolution 77/244. The intergovernmental process foreseen under the resolution is well defined through the text of the resolution, and is clearly very different from the idea of upgrading the UN Expert Committee. Therefore, an upgrade would create duplication in the form of two intergovernmental UN processes. An upgrade of the UN Expert Committee would also create two important problems:

- Firstly, it would create an intergovernmental body that is not fit for purpose. The membership of the Expert Committee is very limited, and thus not inclusive. Since the members are experts appointed in their personal capacity, they are also not necessarily the most appropriate representatives of governments in an intergovernmental negotiation. And while the tax expertise that the committee provides is very important, the discussion about international tax cooperation entails highly political discussions that go beyond the area of highly technical tax matters, which is what the committee is designed to address.

- Secondly, it would create a gap in relation to the important role that the Committee currently fulfills within the UN system, namely delivering technical expert advice on international tax matters. As described above, we believe the UN Expert Committee, in its current form, has an important role to play in providing expertise as the UN scales up its intergovernmental work on international tax matters, as foreseen in Resolution 77/244.

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 European Network on Debt and Development (Eurodad)

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<sup>1</sup> Global Alliance for Tax Justice and the European Network on Debt and Development, Proposal for a United Nations Convention on Tax, March 2022, [https://www.eurodad.org/un\\_tax\\_convention](https://www.eurodad.org/un_tax_convention)

<sup>2</sup> United Nations General Assembly, 'Report of the United Nations Conference on Environment and Development', A/CONF.151/26 (Vol. I), adopted 1992, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf)

<sup>3</sup> World Health Organization, 'WHO Framework Convention on Tobacco Control', adopted 2003, Article 4 paragraph 7, <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=B87BB83692D750D1AA182DBDA8B708B0?sequence=1>

<sup>4</sup> United Nations, 'Convention on Biological Diversity', adopted 1992, Article 1, <https://www.cbd.int/doc/legal/cbd-en.pdf>

<sup>5</sup> United Nations, 'United Nations Convention Against Corruption', adopted 2003, Article 1, [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>6</sup> World Health Organization, 'WHO Framework Convention on Tobacco Control', adopted 2003, Article 5, <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=B87BB83692D750D1AA182DBDA8B708B0?sequence=1>

<sup>7</sup> Human Rights Council, Working Group on the Right to Development, 'Draft convention on the right to development', A/HRC/WG.2//21/2, Report of the Chair-Rapporteur Zamir Akram (Pakistan), 17 January 2020, p. 8, Article 8, [https://www.ohchr.org/Documents/Issues/Development/Session21/3\\_A\\_HRC\\_WG.2\\_21\\_2\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Development/Session21/3_A_HRC_WG.2_21_2_AdvanceEditedVersion.pdf)

<sup>8</sup> OECD, 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting', adopted 2016, <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

<sup>9</sup> OECD, 'OECD/G20 Base Erosion and Profit Shifting Project Preventing the Granting of Treaty Benefits in Inappropriate Circumstances', 2015, <https://www.oecd-ilibrary.org/docserver/9789264241695-en.pdf?expires=1637737548&id=id&accname=guest&checksum=4028ACD40ACE17C0D9284535886007F1>

<sup>10</sup> Global Alliance for Tax Justice and the European Network on Debt and Development, Proposal for a United Nations Convention on Tax, March 2022, [https://www.eurodad.org/un\\_tax\\_convention](https://www.eurodad.org/un_tax_convention)

<sup>11</sup> Specifically, the subsidiary bodies to provide technical and scientific advice are known as the 'Subsidiary Body for Scientific and Technological Advice in the UN Framework Convention on Climate Change'; the 'Subsidiary Body on Scientific, Technical and Technological Advice' in the Convention on Biological Diversity; and the 'Committee on Science and Technology' in the UN Convention to Combat Desertification. See United Nations, 'United Nations Framework Convention on Climate Change', adopted 1992, Article 9, <https://unfccc.int/process-and-meetings/the-convention/history-of-the-convention/convention-documents>; United Nations, 'Convention on Biological Diversity', adopted 1992, Article 25, <https://www.cbd.int/doc/legal/cbd-en.pdf>; and United Nations, 'United Nations Convention to Combat Desertification', adopted 1992, Article 24 [https://www.unccd.int/sites/default/files/relevant-links/2017-01/UNCCD\\_Convention\\_ENG\\_0.pdf](https://www.unccd.int/sites/default/files/relevant-links/2017-01/UNCCD_Convention_ENG_0.pdf)