

Input to the report to be prepared in response to the resolution adopted by the UN General Assembly on the ‘Promotion of inclusive and effective tax cooperation at the United Nations’ (A/RES/77/24)

The Convention Secretariat, which serves the WHO Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products, is pleased to present this input to the report to be prepared in response to the resolution adopted by the United Nations General Assembly on 30 December 2022 on the ‘Promotion of inclusive and effective tax cooperation at the United Nations.’¹

As the report calls for the analysis of ‘all relevant international legal instruments, other documents and recommendations that address international tax cooperation’ as well as the ‘outlining of potential next steps’ and ‘options strengthening the inclusiveness and effectiveness of international tax cooperation,’ the Convention Secretariat would like to highlight the significance of two international treaties that foster international tax cooperation, fight illicit financial flows, and combat aggressive tax avoidance and evasion: the (i) WHO Framework Convention on Tobacco Control and the (ii) Protocol to Eliminate Illicit Trade in Tobacco Products.

The following text summarizes the key obligations under these two international agreements for which international tax cooperation is essential, with an emphasis on the legal obligations and measures that the Parties to these treaties are required to adopt to promote international exchange of information, assistance, and cooperation.

1. The WHO Framework Convention on Tobacco Control

The WHO Framework Convention on Tobacco Control (WHO FCTC), which entered into force on 27 February 2005, is an evidence-based treaty that aims to address the global tobacco epidemic and reaffirms the right of all people to the highest standard of health. It is the first treaty that was negotiated under the auspices of the WHO, and as stated in its Preamble, was developed in response to the “concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke.”² At the time of writing, the WHO FCTC has 182 Parties, and remains one of the most rapidly and widely embraced treaties in history.³

¹ UN General Assembly Resolution A/RES/77/244 is available at:

<https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2023-02/A%20RES%2077-244%20English.pdf>

² The WHO FCTC is available at: <https://apps.who.int/iris/rest/bitstreams/50793/retrieve>

³ The list of Parties to the WHO FCTC is available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=en

The core demand and supply reduction measures of the WHO FCTC include price and tax measures to reduce tobacco use under Article 6 and measures to eliminate illicit trade in tobacco products under Article 15.

Article 6 of the WHO FCTC on price and tax measures

Parties to the WHO FCTC recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party to the WHO FCTC should take account of its national health objectives concerning tobacco control and adopt measures which may include: (a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and (b) prohibiting or restricting, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products. (Article 6)

International cooperation in the WHO FCTC

The Convention expressly highlights the importance of international cooperation in its Guiding principles: ‘International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention.’ (Article 4.3)

The Guidelines for implementation of Article 6 of the WHO FCTC also recognize that international cooperation in scientific and legal fields, provision of related expertise, and exchange of information and knowledge are important means of strengthening the capacity of Parties to meet their obligations to adopt price and tax measures to reduce tobacco. The Article 6 Guidelines further note that measures should be in line with the commitments that Parties have undertaken with respect to international cooperation in other provisions of the WHO FCTC, and that Parties shall:

- ‘...cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.’ (Article 5.4)
- ‘...cooperate, as appropriate, with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties. (Article 5.5)
- ‘... subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as

information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention...’ (Article 20.4)

- ‘...endeavour to cooperate with competent international organizations to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.’ (Article 20.4)

Another tool for international exchange of information and cooperation is the submission of periodic reports of the Parties in accordance with Article 21 of the WHO FCTC. The information required to be submitted in periodic reports includes the rates of taxation for tobacco products and trends in tobacco consumption (Article 6.3). International cooperation helps to ensure that consistent and accurate information related to global, regional and national trends and experiences in relation to tax and price policies is available to Parties through the global treaty implementation database maintained by the Convention Secretariat, in order to enhance their knowledge of international experiences.⁴

The Conference of the Parties to the WHO FCTC, the governing body of the treaty, should also cooperate in keeping the implementation of the Convention under regular review (Article 23.5). The Tenth session of the Conference of the Parties to the WHO FCTC is set to take place in Panama in November 2023.⁵

Article 15 of the WHO FCTC on illicit trade in tobacco products

Illicit trade in tobacco products poses a serious threat not only to global public health, but also to government revenues. Not only does illicit trade increase the accessibility and affordability of tobacco products, which undermines the public health objective of tobacco tax measures -- it also causes substantial losses to government revenues since excise duty and taxes are not collected, and also contributes to the funding of international criminal activities.⁶

Parties to the WHO FCTC recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling and illicit manufacturing, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control. With a view to eliminating illicit trade

⁴ The Guidelines for implementation of Article 6 is available at:
https://fctc.who.int/docs/librariesprovider12/technical-documents/who-fctc-article-6-guidelines.pdf?sfvrsn=3bee36c8_50&download=true

⁵ More information available at: <https://fctc.who.int/newsroom/news/item/20-01-2023-global-tobacco-control-conferences-to-take-place-in-november-2023>

⁶ More information is available in the Brochure on the Protocol to Eliminate Illicit Trade in Tobacco Products:
https://fctc.who.int/docs/librariesprovider12/protocol/protocol-brochure-en.pdf?sfvrsn=c06b6e8d_8&download=true

in tobacco products, Article 15 of the WHO FCTC requires Parties to adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. Article 15 of the WHO FCTC further requires Parties, among other measures, to:

- require that tobacco product packets and packages carry statements or any effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market;
- consider developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade;
- monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate.

2. The Protocol to Eliminate Illicit Trade in Tobacco Products

In view of the serious threat to public health, security and revenue, the Parties to the WHO FCTC decided that a new international treaty was needed to build and elaborate on the obligations under Article 15 of the WHO FCTC to specifically address illicit trade. The Protocol to Eliminate Illicit Trade in Tobacco Products is an international treaty with the objective of eliminating all forms of illicit trade in tobacco products through a package of measures implemented by countries in cooperation with each other. This is the first protocol adopted under the WHO FCTC, and is an international treaty in its own right.

The Protocol entered into force on 25 September 2018, and was developed in response to illicit trade in tobacco products, including both domestic and cross-border trade, and covering tobacco, tobacco products and tobacco manufacturing equipment. At the time of writing, there are 66 Parties to the Protocol, a number that is expected to continue increasing over the coming period.⁷

The Protocol seeks to secure the supply chain of tobacco products through a series of key measures to prevent, deter, detect, investigate and prosecute illicit trade. These include obligations on the Parties to implement a licensing (or equivalent approval) or control system in respect of the manufacture of tobacco products and manufacturing equipment, as well as for the import or export of such products and equipment (Article 6), with the addition of due diligence requirements (Article 7). A key element of the Protocol is the obligation to establish a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems for all products manufactured in or imported into the Party, and a global information sharing focal

⁷ The list of Parties to the Protocol is available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&clang=en

point enabling Parties to make enquiries and receive relevant information (Article 8). Additional measures to effect supply chain control include obligations in respect of record-keeping (Article 9), security and preventive measures (Article 10), and measures to regulate effectively sales by Internet (Article 11), free zones and international transit (Article 12) and duty free sales (Article 13). Additional provisions of the Protocol relate to the establishment, investigation and prosecution of offences (Articles 14 to 19).

International cooperation in the Protocol

The Protocol devotes an entire section (Part V: International Cooperation) to key articles designed to promote international cooperation and provide the legal basis for Parties to exchange information and act together to address the transnational nature of illicit trade. Articles 20 to 31 of the Protocol include a full range of mechanisms for Parties to collaborate with each other through information sharing (Articles 20 to 22), mutual administrative assistance, mutual legal assistance, and law enforcement cooperation (Articles 23 to 29), and extradition (Articles 30 and 31), among other means. Parties to the Protocol are also committed to support each other through training, technical assistance, and cooperation in scientific, technical, and technological matters.⁸

The Meeting of the Parties (MOP) is the governing body of the Protocol and is comprised of all Parties to the Protocol. The Second Meeting of the Parties to the Protocol (MOP2) invited Parties to adopt appropriate instruments and measures to facilitate the exchange of information, to continue to share good practices with each other including through the Convention Secretariat, to explore benefits of regional actions, and to engage and foster cooperation with other international law enforcement organizations.⁹ The Third session of the Meeting of the Parties to the Protocol is set to take place in Panama in November 2023.¹⁰

⁸ An overview of the measures in the Protocol on 'International Cooperation' is available at: https://fctc.who.int/docs/librariesprovider12/meeting-reports/protocol_summary_3jul18-en.pdf?sfvrsn=18ed6a64_16&download=true

⁹ A summary of the outcomes of the MOP is available in the 'Submission of the President of the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products to the thematic review of the 2022 United Nations High-level Political Forum' at: <https://hlpf.un.org/sites/default/files/vnrs/2022/MOP%20President%20Submission%202022.pdf>

¹⁰ More information available at: <https://fctc.who.int/newsroom/news/item/20-01-2023-global-tobacco-control-conferences-to-take-place-in-november-2023>