



The Commonwealth of The Bahamas Input on UN Framework Convention on International Tax Cooperation

Submitted to

**Chair of The Ad Hoc Committee
Draft Terms of Reference
United Nations Framework Convention
On International Tax Cooperation
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Introduction

The Bahamas, an archipelago of 700 islands and cays, is largely dependent on tourism and has a service export-based economy (Francis & Nair, 2020)¹. Foreign exchange earnings are produced by both tourism and financial services (IMF et al. No. 19/202, 2019)², the two main economic pillars (Fraser, 2001)³. Climate risk jeopardizes national development.⁴

The United Nations Ad Hoc Committee (“The Committee”) has been tasked with drafting terms of reference for a UN Framework Convention on International Tax Cooperation (“UNFCITC”).⁵ The Convention should initiate a process that increases the legitimacy, stability, resilience, and fairness of international tax rules in the common interest of all relevant stakeholders. It should establish the legal basis for a fully inclusive and more effective international tax cooperation in terms of substance and process, giving consideration to the value of coherent and consistent international tax rules while also respecting the tax sovereignty of each Member State, the unique challenges faced by The Commonwealth of The Bahamas and other developing countries of The Global South.

1. Why A UN Framework Convention on International Tax Cooperation?

To promote an inclusive and effective international tax cooperation framework that facilitates the realization of the Sustainable Development Goals (SDGs) considering the unique characteristics of the Global South.⁶

2. Objectives

The Convention should set clear objectives inclusive of the following:

1. Acknowledge the right of countries to determine their own tax policies
2. Tax competition
3. To place developed countries and developing countries on an equally footing
4. Take into consideration the unique challenges of developing countries and small island developing states.
5. To combat tax related illicit financial flows

¹ Francis, R. M., & Nair, V. (2020). Tourism and the sustainable development goals in the Abaco Cays: pre hurricane Dorian in the Bahamas. *Worldwide Hospitality and Tourism Themes*, 12(3), 321–336.

² IMF Country Report No. 19/202

³ Fraser, A. G. (2001, November). *Can the Sir Stafford Sands Model of the Bahamian Economy Survive Today's Global Economy?* [Conference session] XXXIII Conference of the Caribbean Centre for Monetary Studies. , Belize City, Belize.

⁴ [mpo-bhs.pdf \(worldbank.org\)](#)

⁵ [UN Tax Convention | Financing for Sustainable Development Office](#)

⁶ [A.RES.78.230_English.pdf \(un.org\)](#)

3. Substantive Elements

a) Tax Competition

Tax competition is a reality in today's global economy and while it can be beneficial for economic growth and development, it can also create an uneven playing field and lead to harmful tax practices.

Exchange of Information

Cooperation should recognize the benefits of tax competition while also addressing any potential negative consequences in the following ways:

- International cooperation and coordination
- Transparency and information exchange
- Reporting requirements
- Focus on fair taxation and administration at a domestic level

b) Privacy

Privacy is a crucial aspect of global financial services that must be protected at all costs. This is especially true in the context of beneficial ownership, where the disclosure of such information can have serious implications for both individuals and businesses.⁷

Drawbacks of Public Registers

While the intention behind public beneficial owner registers may be to promote transparency and combat financial crimes, there are significant drawbacks:

- The violation of client privacy, exposing individuals and their assets to potential risks such as identity theft, fraud, kidnapping, and extortion.
- Potential harm to the reputation and business interests of legitimate companies and individuals who wish to keep their financial affairs confidential.
- Costly and burdensome process.

Alternatives to Public Registers

The Framework should consider alternatives to public beneficial owner registers:

- Centralized registers accessible only to competent authorities (i.e., law enforcement agencies, tax authorities, and financial intelligence units).
- Strengthening existing Know Your Customer (KYC) and Anti-Money Laundering (AML) laws that are universally applied.

⁷ [2022-03-10-Ground-breaking-Civil-Society-Proposal-for-a-UN-EN-PDF.pdf \(globalexchange.org\)](https://www.globalexchange.org/publications/2022-03-10-Ground-breaking-Civil-Society-Proposal-for-a-UN-EN-PDF.pdf)

c) Tax Preferences, Investment Incentives and Free Trade Zones

Tax Preferences and Investment Incentives

The use of tax preferences and incentives can be an effective tool for attracting investment and promoting economic growth. However, they can lead to base erosion and profit shifting. The UNFCITC should address the use of tax preferences and investment incentives. It should require the use of tax preferences and incentives in a transparent and fair manner in the following ways:

- Defined eligibility criteria
- Non-discriminatory granting of preferences
- Transparency of information on availability of tax preferences and incentives
- Monitoring and evaluation of the impact of tax preferences and incentives
- Compliance/enforcement with the rules

Free Trade Zones

Free trade zones (FTZs) have been established to promote international trade by providing special economic and trade incentives to businesses. The UNFCITC should acknowledge the benefit of FTZs whilst including mechanisms to mitigate BEPS (i.e., strengthening domestic tax laws and regulations, disclosure requirements cooperation between competent authorities, monitoring, and reporting).

d) Transfer Pricing

Today transfer pricing is a crucial aspect of the global economy. The UN Framework Convention should consider:

- The effectiveness of transfer pricing rules
- The need to develop rules which consider the differences in local markets and economic conditions
- The need for easily enforceable rules
- The challenge of double taxation
- The need for flexibility when companies are allocating costs and profits

Consider Alternatives to Transfer Pricing Rules

The UN Framework Convention should consider alternatives including but not limited to the following:

- a) Formulary Apportionment
- b) Unitary Taxation
- c) Advance Pricing Agreements
- d) Digital Taxation

Arm's Length Principle

The current international tax system is based on the “arm’s length principle,” which states that transactions between related parties should be conducted at market prices. However, this principle is outdated and inadequate in addressing the tax challenges posed by the group structure of Multinational entities (MNEs). To mitigate manipulation of the arm’s length principle, the following measures should be considered:

- Reconsider transfer pricing rules (above)
- A process for the exchange of information between tax authorities
- The use of digital taxation as a means to address the issue of taxing rights between countries

e) Environmental Taxation

Recognition of environmental taxes (i.e., carbon tax). One of the main benefits of carbon taxes is that they provide a clear financial incentive for companies and individuals to reduce their carbon emissions. This can lead to innovative solutions and technological advancements in clean energy and other sustainable practices. The tax can also help level the playing field for renewable energy sources, making them more competitive with fossil fuels. A carbon tax also levels the playing field between high emitting developed countries and low emitting developing countries.

f) Equitable Distribution of Taxing Rights

The current distribution of taxing rights is inequitable, with developed countries holding a significant advantage over The Global South. The UN Framework Convention should facilitate the following:

- A more collaborative and inclusive approach to international tax policymaking, with active participation of developing countries.
- A re-evaluation of the current tax treaties between developed and developing countries. These treaties are often drafted in favor of developed countries
- A focus on domestic tax policies in developing countries
- A focus on the unique challenges faced by developed countries including the impact of the climate crisis and resources needed to achieve the UN Sustainable Development Goals.

4. Procedural Elements

a) Key Committees and Permanent Secretariat

The UNFCITC should establish key committees and a permanent secretariat to oversee the implementation and enforcement of the convention. The committees

should include representatives from all member countries and should have the authority to make decisions and recommendations.

The structure of the Secretariat should be considered as well as how it will interact with other UN bodies. There may be an opportunity to engage with the existing UN technical Tax Committee of experts and entities related to these specific international tax matters as an advisory body and mediator for the COP.

b) Agenda Setting

All countries should have input on the agenda of the various committees. The agenda should reflect the needs and concerns of all stakeholders and aim to priorities and address the identified issues in a fair and equitable manner.

c) Decision-Making Process

The convention should adopt a majority voting system. This will allow for timely and effective decision making, while also considering the views of all member countries.

A Conference of Parties (COP) should also be considered in the decision-making process⁸, providing a platform for countries to discuss and negotiate issues and provide updates on progress being made to implement the Convention.

d) Voting Rights

Voting rights should be allocated fairly among all member countries. This will ensure that all countries have a both a vote and voice in the decision-making process.

e) Enforcement Protocols

Effective enforcement protocols are essential for the successful implementation of any international tax framework. These protocols should include mechanisms for resolving disputes between countries, as well as penalties for non-compliance. Diplomacy should also play a crucial role in resolving tax disputes between countries.

Elimination of Blacklists

Blacklists, which are lists of countries deemed to be non-cooperative in tax matters, have been a source of contention in international tax cooperation. The UNFCITC should aim to eliminate the use of blacklists and instead focus on promoting cooperation and transparency among countries.

- Blacklists unfairly target developing countries, often without taking into account their unique economic and social contexts.

⁸ [TCPB21_Streamlining-the-Architecture-of-International-Tax-through-a-UN-Framework-Convention-on-Tax-Cooperation_EN.pdf \(southcentre.int\)](#)

- Blacklists have a severe impact on a country's economy, discouraging foreign investment and trade
- The listing process is subjective and biased. Countries can be placed on the blacklist without a clear explanation, with little opportunity for them to defend themselves, damaging their international reputation and credibility.
- Developing countries often lack capacity and the blacklisting process does not provide any support or assistance in this regard.
- Blacklists breach our lawful right to development.

f) A Simplified Tax Administration System

A Simplified Tax Administration system could incorporate the following:

- Standardised Tax Treaty Provisions
- An inclusive body for dialogue on tax matters (i.e. Conference of Parties)
- Protocols and Codes of Conduct
- A Multilateral Instrument

g) Dispute Resolution

A comprehensive dispute resolution system should incorporate various methods and tools to effectively resolve conflicts and maintain peace. Diplomacy, negotiation, and dialogue between competent authorities can be utilized to promote understanding and find mutually agreeable solutions. In cases where a neutral third party is needed; arbitration and conciliation can be employed to facilitate a fair and binding decision. As a final resort, the International Court of Justice can serve as an option for dispute settlement. This will ensure a multi-faceted approach to dispute resolution.

h) Technical Assistance and Capacity Building

Mechanisms for technical assistance, knowledge sharing, and capacity building should be included in the UNFCITC. This will help countries of The Global South to develop and strengthen institutional and technical capacities to promote sustainable economic growth consistent with the SDGs.

Conclusion

The UNFCITC should include both substantive and procedural elements in order to effectively address the challenges of international taxation. In this regard, we have encouraged the input of stakeholders in The Bahamian economy which has been submitted directly to The Committee. The Bahamas submits that the Convention should recognize the benefits of tax competition while also addressing illicit financial flows. These issues can be addressed in the initial Protocols.