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

Your Excellency,

This submission is in the name of the *Global South Project on Combating Profit Shifting, Tax and Wage Evasion from Below*. We are immensely supportive of the work undertaken by the Committee and appreciate this opportunity to submit inputs on the question: *"What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?"*

This submission is structured as follows:

1. Context informing this submission;
2. Substantive Elements;
3. Procedural Elements.

Context and Background

This submission is informed by the work of the *Global South Project on Combating Profit Shifting, Tax and Wage Evasion from Below*. The Global South Project is a coalition coordinated by Civil Society Organisations (CSOs) from South Africa, Brazil and the Philippines, working with other CSOs, trade unions, community-based organisations and researchers from the wider Southern Africa, Latin America, and Asia-Pacific regions. The contents of this submission are intended to reflect the issues raised in the many engagements between project partners and those directly affected by tax injustices.

Researchers have estimated a global tax loss of $480bn resulting from the $1.15tn funnelled into tax havens by multinational corporations (MNCs) in 2023 alone.[1] The United Nations Conference on Trade and Development (UNCTAD) noted in 2020 that Africa loses around 3.7% of its GDP to illicit financial flows annually, of which the largest component is commercial and tax related.[2] While countries in the Global North may suffer greater losses in absolute terms, it is countries in the Global South which *feel the effects* of these losses more strongly, given the critical need for tax revenues to meet social needs and finance low-carbon industrialisation and development. These losses are felt greatest in the subsequent austerity policies that are implemented in the Global South, which are being

[1] https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf

[2] https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf

driven by reductions in tax revenue. The result is deteriorating public services and harmful outcomes for the poor and unemployed, especially women.

Through our work we have also seen the direct impacts that profit shifting has beyond tax losses at a national level. Profit shifting by multinationals reduces the profitability of local subsidiaries in 'source' countries.[3] This suppresses the ability of workers to negotiate for increased wages or improved working conditions (what we term 'wage evasion'), and results in the non-fulfilment of developmental obligations such as the commitment to develop local infrastructure required for the granting of mining licences in many countries.[4]

Substantive Issues for a FCITC

- ### Fundamental Reform of the Tax System to Combat Profit Shifting by Multinational Companies

The principles of the international tax system are rooted in norms established a century ago, many of which are no longer applicable to a deeply integrated world economy with exceptionally mobile capital flows. Furthermore, these norms reflect a bias towards capital-exporting 'residence' jurisdictions over capital-importing 'source' jurisdictions. Transfer pricing norms such as the arm's length principle expect MNCs to treat subsidiaries within the same group as if they were external companies, while in reality MNCs readily use intra-group transactions to shift profits around within the company group, minimising their tax liabilities and obtaining a commercial advantage. Furthermore, the arm's length principle is notoriously difficult to apply in cases such as the payment of royalty fees for the use of a trademark or patent within a group structure.

We recommend that the UN FCITC aim to establish a new foundation for international corporate taxation, which recognises the reality that multinational corporations act as coordinated entities stretching across multiple jurisdictions and moves towards a unitary approach for the taxation of such entities on their global income. While the details of such a system would be established through further protocols, we strongly urge that its establishment be considered a central objective of the FCTIC.

- ### Align Taxing Rights with Economic Substance

[3] https://doi.org/10.1016/j.jpubeco.2020.104153
[4] https://aidc.org.za/wp-content/uploads/2023/06/GSP-Report.pdf

A key question for any move towards a unitary tax system is how the taxing rights on MNC profits ought to be allocated. Most MNCs are headquartered in wealthier countries in the Global North, but many derive their profits from activities in the Global South. This is especially true for companies in the extractives sector, where their value chains begin with the extraction of non-renewable resources.

In sectors such as extractives, the economic activities that take place in 'source' jurisdictions are those that bring environmental degradation and destruction (such as tailings dam disasters or acid mine drainage), increased exposure to bio and other health hazards, and risk of conflict and violence against local communities as well as labour rights violations. The presence of primary industries such as mining also tend to crowd out other economic activities, leading to the phenomenon of the 'resource curse'.

The above factors are especially pressing in countries which have historically suffered exploitation and under-development under colonialism, but current proposals for a global minimum tax on corporate income give primary taxing rights to the 'residence' jurisdictions where MNCs are headquartered, rather than these 'source' jurisdictions. This threatens to only reinforce historical South-to-North patterns of resource and wealth transfer, as stated by a group of United Nations independent experts in January 2024:

> *In reifying patterns of economic extraction with historical origins in systems of colonialism and slavery, the deal has the potential to prejudice the predominantly non-white nations of the Global South.*[5]

We therefore recommend that the UN FCITC give special attention to ensuring taxing rights are allocated to jurisdictions where real substantive economic activity takes place rather than where companies are headquartered, so as to address not only the immediate needs of developing countries but also underlying historical inequalities.

- ## End the Tax 'Race to the Bottom'

Globally, the average statutory corporate tax rate has fallen from 40% in 1980 to 23% in 2022.[6] As a result of loosened global restrictions on trade and investment throughout this period, states have tried to attract investment by lowering their statutory tax rates. This competition has in turn created a 'race to the bottom' for corporate tax rates. Beyond the reduction in statutory corporate income tax rates, many states have also begun employing other tax incentives such tax-exempt special economic zones (SEZs). United Nations bodies,

[5] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=28676
[6] https://taxfoundation.org/data/all/global/corporate-tax-rates-by-country-2022/#_ftn18

including the Financing for Development Office, have already issued guidance urging a cautious approach towards tax incentives.[7]

The beneficiaries of this trend have been large corporations: corporate income has grown at double the rate of GDP in developed economies between 1990 - 2018.[8] At the same time, the tax-to-GDP ratios of many countries have remained steady or declined.[9] The consequences are a rise in inequality, and the worsening conditions of those reliant on public-funded services and social support, especially in the Global South.

We urge the UN FCITC to consider the elimination of the 'tax race to the bottom' a central part of its mandate and objectives, moving towards a global minimum tax on corporate income at a sufficiently high rate of 30% in line with recommendation 4(b) of the FACTI panel report.[10]

- Enable Tax and Financial Transparency

Financial transparency is a cross-cutting issue and a prerequisite for an effective international tax system. There has been some progress towards some basic elements of a global transparency regime over the past decade, such as country by country reporting for multinationals and the automatic exchange of information between states. However, the current state of tax and financial transparency is still far from where it needs to be in order to address cross-border tax abuses. Developing countries face a number of challenges in implementing difficult-to-administer standards. There are also significant gaps such as the lack of an effective international framework for asset registers or the disclosure of beneficial ownership information. These challenges are particularly pressing for under-resourced tax administrations in Global South states.

The lack of access to vital financial and ownership information is not just an impediment to effective taxation. Without this information, researchers are unable to advance our understanding of profit shifting and wealth offshoring, civil society organisations and journalists are unable to expose tax abuses by corporations, and trade unions are less able to negotiate for improved working conditions. While acknowledging concerns regarding privacy and competition, we do not believe that these principles outweigh disclosure for the sake of public interest when it comes to the financial and ownership information of MNCs.

[7] https://www.un.org/esa/ffd/wp-content/uploads/2018/02/tax-incentives_eng.pdf
[8] https://www.bain.com/insights/have-we-hit-peak-profits/
[9] https://ourworldindata.org/grapher/tax-revenues-as-a-share-of-gdp-unu-wider
[10] https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf

We recommend that the UN FCITC include the development of global financial transparency frameworks in its scope, while emphasising ease of implementation for Global South tax administrations, as well as public access to information in the public interest.

- Align Taxation With Climate Justice Objectives

One of the key challenges in meeting the climate targets set by the Paris Agreement has been the lack of finance. According to the Intergovernmental Panel on Climate Change, "finance flows fall short of the levels needed to meet climate goals across all sectors and regions" and "current global financial flows for adaptation are insufficient for, and constrain implementation of, adaptation options, especially in developing countries."[11]

Global South states face a double burden of needing to finance both social-economic development *and* climate mitigation or adaptation, with a narrow resource base compared to the Global North. Private finance is not able to meet this gap - a report submitted to COP26 showed that every dollar of private sector investment required almost three dollars of public finance[12] - and climate objectives will remain a secondary concern for states struggling to fund basic public services. **We recommend that the work of the UN FCITC looks at aligning the international tax framework with climate objectives by enabling domestic resource mobilisation that meets the developmental needs for Global South states.**

Procedural Proposals for a UN FCITC

- Participation of Trade Unions and Civil Society

The work of the UN FCITC should be member-state led, but it is vital that other stakeholders such as civil society and trade unions are able to observe and participate in the workings and negotiations of the FCITC, as recognised in Annex II of the annotated provisional agenda in February. We would like to emphasise the point that large-scale corporate profit shifting directly affects workers at productive subsidiaries and communities located around company operations, as well as indirectly affecting the urban and rural poor who are reliant on tax-funded public services. However, these groups are seldom afforded opportunities to engage with tax matters, traditionally the domain of experts or opaque multinational bodies.

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[11] https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements

[12] https://odi.org/en/publications/blended-finance-in-the-poorest-countries-the-need-for-a-better-approach/

As representatives of those most closely affected by profit shifting and other illicit financial flows, the effective participation of trade unions and CSOs should be encouraged. This should include opportunities for written and oral submission, the ease of access to information and the livestreaming of proceedings.

- Transparent and Democratic Decision Making

The terms of reference (ToR) for a United Nations FCITC should be cognisant of the challenges and shortcomings of existing efforts to build international tax cooperation. Existing forums have led to frustration among developing country participants regarding issues of structural exclusion and undemocratic decision-making. The 2022 ECOSOC Special Meeting on "International Cooperation in Tax Matters'' saw a number of speakers express this view, specifically pointing at elements such as consensus-based decision-making and the lack of transparency as barriers to effective participation on an equal playing field. Without effective and equitable democratic decision-making processes, the legitimacy of a UN FCITC could be endangered.

We urge that the UN FCITC fully adopt the United Nations' democratic procedures and transparent ways of working, ensuring that any structural flaws or problems in previous international tax platforms are not replicated or carried over into this new body. The equal and effective participation of Global South members in decision making and agenda setting processes should be specifically emphasised.

This submission represents the views of the Global South Project on Combating Profit Shifting, Tax and Wage Evasion from Below. The Project's coordinators are:

- *The Alternative Information & Development Centre*
- *The Asian Peoples Network on Debt and Development*
- *Justiça nos Trilhos (Justice on the Tracks)*
- *Iglesias y Minería (Churches and Mining)*