



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

Friday 15th March 2024

This submission is submitted by Southern and Eastern Africa Trade Information and Negotiations
Institute (SEATINI -Uganda) and the Tax Justice Network – Africa.

We the undersigned Civil society Organizations (CSOs) strongly welcome the **UNGA resolution.78.
/230** and commend the efforts towards formulation of the Framework Convention on International
Tax Cooperation that takes into consideration the unique development needs of African countries and
the Global South at large.

**BRIDGING THE GAP BETWEEN INTERNATIONAL TAX GOVERNANCE, TRADE, AND INVESTMENT FOR
THE BENEFIT OF THE GLOBAL SOUTH COUNTRIES – AFRICAN COUNTRIES.**

PREAMBLE (contextual analysis)

The world is evolving rapidly, and economies globally are strongly getting interconnected. These changes, driven by geopolitical shifts, technological progress, and economic factors, add layers of complexity to the already intricate world of international tax and trade. Inextricably, tax and trade policies are linked. Tax is a key investment determinant influencing the attractiveness of a location or an economy for international investors, particularly those heavily engaged in international trade. Tax uncertainty compounds the already high levels of uncertainty in the global trade environment. On the downside, the disparities in the economic development and growing inequalities in the distribution of income and wealth continue to manifest due to unfavourable policies that are skewed towards the protection and promotion of interests of the developed nations at the expense of development needs and aspirations of developing countries. This is more pronounced in the context of African countries, where the potential for economic growth is immense yet stifled by unfavourable international economic policies and practices. This calls for development and establishment of a framework convention that bridges the gap between international Tax and the realities of trade and investment in African countries. This nexus will be critical for fostering economic development and addressing the deep inequalities that pervade the global economy causing harmony between the international tax governance and the trade and investment needs of African countries unlocking a new era of prosperity and equity that benefits the continent and the world at large.

Taxation is central to the current development agenda of African countries as it provides sustainable financing of their development priorities to spur growth. Fundamentally, tax policies shape the environment in which international trade and investment takes place. Thus, a core challenge remains in finding optimal balance between the international and domestic tax regimes that ensure sustainable environments for trade and investment to thrive while at the same time leverage enough revenue for public service delivery.



Building on the assertion that a more equitable global economic framework is indispensable, it is evident that the crux of achieving this lies in recalibrating the nexus between the global tax governance system and the intricate dynamics of trade and investment in African countries. The alignment between the international tax rules, regulations, governance structures and practices and trade and investment policies should be paramount on the agenda of the Ad Hoc intergovernmental committee with a mandate to develop draft terms of reference for a United Nations framework convention on international tax cooperation.

OBJECTIVES, PRINCIPLES AND KEY OBLIGATIONS.

The Terms of Reference (TORs) should bring together the following key objectives.

1. Outline the nexus between international tax regimes and trade and investment policies and practices globally and as well promote equal opportunities and economic benefits with and between countries.
2. Combat trade and investment practices that facilitate Illicit Financial Flows.
3. An acknowledgment of the intersectionality of tax and other key issues such as the promotion of trade, investment, and the movement of goods and services globally.
4. Promoting international tax cooperation to facilitate the Growth and acceleration of trade.
5. An analysis of how existing Multilateral Trade (under the WTO mechanism) and Tax Agreements (under the OECD mechanism) will impact the formulation, implementation, and enforceability of the Framework Convention on International Tax cooperation.

We also Recommend that the TORs should include principles that will elaborate the negotiation of the convention including.

- i. **State Sovereignty:** Every state has the right to determine tax policies and regulations that shape their domestic tax, trade and investment regimes and maintain the responsibility that such policies and consequent practices don't distort tax, trade and investment mechanisms and systems of any state.
- ii. **Promote Global trade harmony through usage of international tax policies.** Nations should commit to implement fair and transparent tax policies that promote both intra and inter trade by ensuring equitable treatment of domestic and international investments. This can be achieved through establishment of policy frameworks and protocols that minimize tax distortions and barriers to trade while at the same time deter harmful tax practices that facilitate tax evasion and avoidance.
- iii. **Review and re- negotiation of tax treaties and Investment Agreements:** An obligation should be imposed on countries to review their existing Double Tax Treaty Networks and investment agreements, renegotiate, or terminate any treaties that don't align with their commitments under the convention. The spirit of this obligation is to foster policy



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coherence increasing the effectiveness of the convention, promoting equitable allocation of taxing rights, and fostering an international tax governance system that responds to the development needs of developing economies and fosters equitable distribution of investment opportunities.

- iv. **Access to information and exchange of Information:** While observing the right to privacy and confidentiality of trade secrets and intellectual property rights, there should be access to information including Country by Country Reports to assess the fairness, equitability, progressiveness, transparency and effectiveness of the tax regimes and international tax best practices.
- v. **Inclusion and equal representation:** Equal representation and sovereign equality should be upheld to ensure that all countries have a meaningful voice in the design and reform of the international tax governance framework. This includes decision making structures that ensure equitable representation irrespective of their size or economic power.
- vi. **Multistakeholder participation:** Upholding the principles of Article 71 of the United Nations Charter participation of the CSO, Academia and thinktanks should be enhanced considering their diversity and their capacity to support effective negotiation and policy formulation. This will require review of the internal structure to grant stakeholder participation beyond the observer status.

Given the Binding nature of the Framework Convention, the Terms of Reference should outline obligations for the nations:

- i. **Early protocols on Bilateral Investment Treaties.** In line with the above principles, nations should negotiate an early protocol within the convention specifically addressing Bilateral Investment Treaties (BITs). The protocol should ensure that the BITs are updated to incorporate globally accepted principles on international Taxation, periodically reviewed, updated, renegotiated, or terminated if found to be inconsistent with the principles outlined in the convention.
- ii. **Technical cooperation:** We acknowledge that not all countries have equal technical, negotiation and financial capacity to implement and enforce complex tax rules and guidelines effectively. International support including technical assistance, exchange programs and capacity building initiatives are essential to strengthen tax administration and enhance revenue mobilization efforts.

AREAS OF CONSIDERATION FOR THE NEGOTIATION OF THE TERMS OF REFERENCE

- I. The ToRs should guarantee the negotiations of the international tax rules and standards that improve tax predictability and ensure tax certainty. This is vital for creating a favourable and conducive environment that boosts trade and investment uplifting the global economic landscape.



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- II. Ensure that international tax rules and standards shape trade practices to combat illicit financial flows, promote financial integrity, ensure economic justice, and benefit all nations. This will ensure that MNEs contribute their fair share of taxes globally thereby, creating a fair, just tax governance system.
- III. Addressing the pressing challenges surrounding the taxation of cross border services particularly in the realm of e-commerce and digital trade is imperative. While Paragraph 6 of the Resolution underscores addressing this issue under a separate protocol, it's imperative that this is included in the negotiations of the framework convention. This approach aims to navigate the intricate jurisdictional hurdles inherent to cross border service trade leading to mutually beneficial outcomes. This should encompass discussions around the WTO moratorium to ensure a holistic and mutually beneficial outcome.
- IV. The ToR's for the convention should align with the global commitment and outcomes adopted in the Monterrey Consensus, Doha Declaration, and the Addis Ababa Action Agenda that recognize that domestic economies are now interwoven with the global economic system and, inter alia, the effective use of trade and investment opportunities can help countries to fight poverty therefore, National development efforts need to be supported by an enabling international economic environment.
- V. Highlight the necessity for international tax regulations to cater to the requirements, preferences and capabilities of African nations while effectively tackling the dynamics of the contemporary markets and business practices within the comprehensive revamp of the global financial architecture.
- VI. Secure an equitable result that underscores the aspirations of both advanced and emerging economies, guaranteeing that the global tax framework promotes fairness in the taxation and allocates taxing rights to nations hosting economic activity.
- VII. While the threat of conflicting and competing international tax regimes persist, negotiations must ensure that the outcomes foster complementarity where feasible and addressing existing gaps in the current international tax system to ensure fiscal policy coherence and mitigate competition among the international tax systems.
- VIII. The Negotiations should ensure establishments of mechanisms that foster Publicly accessible Beneficial Ownership Registers indicating the true (natural persons) owners of these companies and trusts to foster transparency and curbing tax evasion and avoidance mechanisms.
- IX. To foster transparency fairness and effectiveness of the international tax system, the negotiations of the ToRS should encompass and address the existing challenges around Country-by-Country Reporting (CbCR) and strengthen multinational corporations the CbCR mechanism.

Procedural Elements.



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The convention should establish a fair, transparent, and inclusive structure for global governance of international tax matters. This includes establishing the key institutional arrangements, including a Conference of the Parties (COP) and a Secretariat where all countries can participate on an equal footing, and where the Secretariat is neutral and equally accountable to all countries.

Support for the participation of developing countries remains critical to garner effective participation, especially from the least developed countries, including the possibility of sending their experts to participate in the negotiations. This will enable equal representation and global coordination fostering a framework that is robust enough to meet the needs of developing countries and accommodate differences of approach.

International taxation is an issue of high interest to the public, and we would like to underline the importance of ensuring that the negotiations are fully transparent. With this in mind, we believe that it is important that all intergovernmental negotiating sessions are live streamed on UN Web TV, and any other official UN official online channels and access granted for physical participation.

We welcome the adoption of Annex 2 during the first negotiation session in February 2024 and stand ready to make our contribution. In that context, we would like to highlight the importance of ensuring that the participation of CSOs and trade unions is fully inclusive and effective. All negotiation sessions should be transparent with civil society provided an opportunity to be self-organized and to make statements from the floor after Member States speak.

In conclusion, we applaud the opportunity availed to the various groups to submit to this landmark process and look forward to being part of forthcoming opportunities both in observing the negotiations, and in engaging in active dialogue with the secretariat as well as with member states on some of the aspects that have been raised in this submission. We look forward to an ambitious UN Framework Convention on International Taxation that will enable greater resourcing and alignment to the needs of the most Vulnerable nations and facilitate and foster sustainable trade practices and cure unhealthy tax competition promoting equitable distribution of investment opportunities uplifting the global economic landscape.

On behalf of SEATINI – Uganda and Tax Justice Network Africa

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