

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

14 March 2024

**Subject: Submission from Tax Justice Aotearoa New Zealand in response to the call for inputs to the work of the UN Tax Convention Committee**

Your Excellency,

Tax Justice Aotearoa New Zealand (TJA) strongly welcomes the UNGA Resolution 78/230, including the work to develop a UN Framework Convention on International Tax Cooperation (FCITC). We appreciate the opportunity to submit our input to the work of the UN Tax Convention Committee (UNTCC).

Our submission aligns with the submission of the Civil Society FfD Mechanism, coordinated by the Global Alliance for Tax Justice, and incorporates much text from that submission. We have signed that submission also.

Our input focuses primarily on the tasks of the UNTCC in framing the terms of reference, along with elements of the Convention itself. This distinction allows us, for instance, to distinguish between recommended processes for undertaking the work of the Committee, and procedural elements to be contained in the work of the Convention itself.

Our submission sets out:

- A. The output: The tasks of the UN Tax Convention Committee
- B. The process: How both the UN Tax Convention Committee and the proposed International Negotiating Body would work in undertaking their tasks

### **Tasks of the UN Tax Convention Committee**

The task of the Committee and its purpose is to complete by August 2024 (Resolution adopted by the GA on 22 December 2023, Art 4), the basis of a report for the General Assembly at its seventy-ninth session that sets out draft terms of reference for a UN Framework (Art 8 of the Resolution). This would provide a basis for beginning negotiations on the FCITC by Member States.

We recommend that the report on proposed Terms of Reference contain:

1. Rationale for the FCITC
2. Draft elements for the Convention and possibly provisional text, prepared as a basis for negotiating the FCITC
3. Proposal for an International Negotiating Body to begin work on negotiating a draft text and any agreed Protocols, based on the 'Draft Elements'

## **1 Rationale for the FCITC**

The FCITC is needed to:

- strengthen international tax cooperation and make it fully inclusive, fairer, and more effective;
- accelerate implementation of the Addis Ababa Action Agenda on Financing for Development and the 2030 Agenda for Sustainable Development.

## **2 Draft elements of the Convention**

Draft elements would consist of substantive and procedural elements.

### *Substantive elements*

Definitions, use of terms, scope: All forms of taxation are within scope of the FCITC (whether called a tax or levy or duty or tariff etc). Definitions should reference the formal UN statistical definition of illicit financial flows, explicitly including tax avoidance as well as tax evasion.

### Objectives, principles and key obligations

The Terms of Reference (ToRs) should suggest an overall objective for the future FCITC and its protocols, eg:

'to promote international tax cooperation through tax systems and rules that are cooperative, fair, progressive, fully inclusive, transparent and effective; promote equality both within and between countries; promote gender equality, human rights, sustainable development and environmental protection; and combat tax-related illicit financial flows, by providing a framework for tax cooperation strategies, to be implemented by Parties at national, regional and international levels.'

### Guiding principles:

- The full range of taxation functions, that is, those of raising revenue, redistribution, furthering societal goals and strengthening political representation, are crucial to achieving all human rights as set out in Article 55 of the UN charter.

- Every State has the sovereign right to decide the policies and practices of its domestic tax system, as compatible with its undertakings under this Convention, and the responsibility to ensure that such policies and practices do not cause damage to, or undermine the effectiveness of, the tax base or system of any other State;
- The right to privacy is balanced with the right of citizens to access information to assess the fairness, equitableness, progressivity, transparency and effectiveness of their domestic tax system- in addition to structured mechanisms for citizens' engagement in tax policy processes
- The participation of civil society is essential. A similar principle can be found in Article 4.7 of the World Health Organization (WHO) Framework Convention on Tobacco Control.
- The costs of pollution and environmental damage should be borne by those causing it, not those suffering its impacts
- Non-retrogression

#### *General obligations*

- Each party shall develop, implement, update and review tax strategies (set out below) relevant to international tax cooperation in accordance with this Convention and its Protocols
- In undertaking this obligation, each Party shall adopt and implement effective legislation, executive and administrative actions
- Parties are to review any tax-related treaties that they have entered into, and renegotiate or terminate any treaties that are inconsistent with their commitments under the FCITC.

#### *Strategies for achieving objective of the FCITC*

1 Structure of the corporate tax system: The FCITC should set out core design elements of the corporate tax system, with details to be expanded in a protocol. The core elements would include:

- Multinational corporations to be taxed as coherent entities, on the basis of their global profits; with a unitary taxation approach based on formulary apportionment, including a fair reallocation of taxing rights between countries in order to ensure corporate tax is levied in the jurisdictions with underlying real economic activity
- A realistic and effective minimum corporate tax rate.

2 Taxation of cross-border services in a digitalized and globalized economy. This issue, relevant also to taxation of e-commerce and digital services taxes, is mentioned as a priority area in Resolution 78/230 (paragraph 6(e)) with reference to the

development of early protocols. It should therefore be a provision in the FCITC, to be further elaborated in a subsequent protocol. Taxation of cross-border services raises some difficult jurisdictional issues, particularly in relation to the World Trade Organisation (WTO). The Convention will need to address conflicts between the FCITC, the WTO, and other organizations.

**3** Taxing the income and wealth of the richest. To reverse the decades of falling tax rates on the rich seen across many countries, and the rise in extreme inequality, the new FCITC should support countries in building fairer, more progressive tax systems that reduce inequality by taxing the income and wealth of the richest.

**4** Effective taxation of extractives. The importance of effective taxation of extractives is recognized in the preamble of Resolution 78/230. Strategies in the FCITC would recognize the rights and needs of communities impacted by extraction, the need to reduce inequalities, as well as to environmental sustainability.

**5** Tax and Environment. Article 6(b) of Resolution 78/230 underlines the importance of a holistic, sustainable development perspective that considers interactions with other important economic, social and environmental policy areas. FCITC strategies would cover progressive green taxes, combining taxation with the pursuit of environmental objectives and reduction of inequalities.

**6.** Tax and Gender: The convention should provide that proposed tax policies be reviewed regularly at national, regional and global levels to assess their impact on the realization of gender equality and women's rights, and to ensure that tax policies do not contain gender biases, whether explicit or implicit.

**7.** Transparency-related provisions

- Automatic information exchange (AIE): Multilateral, automatic exchange of information about financial accounts and related asset classes, without the requirement for immediate reciprocity from developing countries;
- Sharing of technology and capacity support for developing countries to introduce and administer effective systems to protect confidential data.
- Public beneficial ownership registers: Transparency around the true ("beneficial") owners of companies, trusts, partnerships and other legal vehicles through beneficial ownership registers is vital for combating tax evasion. Such registers are to be accessible at no cost to the public
- Public country by country reporting by multinational corporations (CBCR). Public CBCR is essential for assessing the fairness and effectiveness of the corporate tax system, as well as for identifying risks of tax avoidance by multinational entities.

- Tax incentives and exemptions: information to be highlighted in publication of reports on tax expenditures by national governments, to enable citizens and policy actors to assess the benefits of tax incentives and exemptions awarded to multinational entities;
- Appropriate public disclosures of matters such as tax policies and practices by national tax authorities to strengthen public accountability and effective cross-border cooperation;
- A global asset register to underpin the fight against illicit financial flows including tax abuse. This would combine public data components and components held privately for tax authorities and other enforcement bodies.

### *Early protocols*

Some topics of future protocols can be identified in the FCITC itself, such as has been done in Article 19.3 of the Convention on Biological Diversity, with a specified date for completion.

### *Procedural elements for the FCITC*

Conference of the Parties and Secretariat: The FCITC must establish a fair, transparent and inclusive structure for global governance of international tax matters, anchored within the UN system and adhering fully to the rules and procedures of the UN. Provision should be made for key institutional arrangements, including a Conference of the Parties (COP) and a Secretariat, where all countries participate on an equal footing, and where the Secretariat is neutral and equally accountable to all countries.

Subsidiary bodies: The FCITC could also establish the first subsidiary bodies. The existing UN Expert Committee on International Cooperation in Tax Matters could be incorporated as a subsidiary body of the FCITC.

Implementation: In order to monitor and support the implementation of the FCITC, a UN public registry for tax and fiscal policies should be established, along with a UN public registry for corporate transparency.

### *Further draft elements*

The FCITC should address key points such as reporting requirements of the Parties, settlement of disputes, and enforcement mechanisms. Enforcement mechanisms should be as strong as those available to the WTO. These would include incentives for compliance with the FCITC. Enforcement should also be facilitated by common principles for effective, appropriately resourced and independent enforcement by tax authorities; and for the disclosure of performance data and aggregate statistics that support accountability, including of tax authorities themselves.

### **3 Proposal for an International Negotiating Body to begin work on negotiating a draft text and agreed Protocols, based on the 'Draft Elements' proposed above and as agreed in August 2024**

The terms of reference for the UN Tax Convention Committee should include, as well as drafting elements of the FCITC outlined above, the task of preparing a proposal to establish an International Negotiating Body (INB). This would ensure that the INB could commence work after August 2024 on negotiating the FCITC, on the basis of draft elements prepared by the UN Tax Convention Committee. The INB could also begin work on one or two agreed protocols identified for early completion.

#### **How the UN Tax Convention Committee, and the proposed International Negotiating Body, would work in undertaking their tasks**

##### *Participation of civil society organizations (CSOs) and trade unions*

The fully inclusive and effective participation of CSOs and trade unions is essential. All negotiation sessions should be transparent with civil society able to self-organize and to make statements from the floor following Member States.

##### *Transparency of the negotiations*

International taxation is of high interest to the public, and it is critical that the negotiations in the UNTCC are fully transparent – including to those not able to travel to New York. We therefore urge that all intergovernmental negotiating sessions are live-streamed on UN Web TV and recorded.

##### *Supporting the participation of developing countries*

The importance of ensuring support for the effective participation of developing countries is well-recognised. This should include sending experts from relevant countries to participate in the negotiations. We note that other UN processes have specific mechanisms set up for this purpose. Support for participation of developing countries should go through the UN Secretariat.

We are happy to provide further comments.

Yours sincerely,

Tax Justice Aotearoa New Zealand (Louise Delany, Secretary)