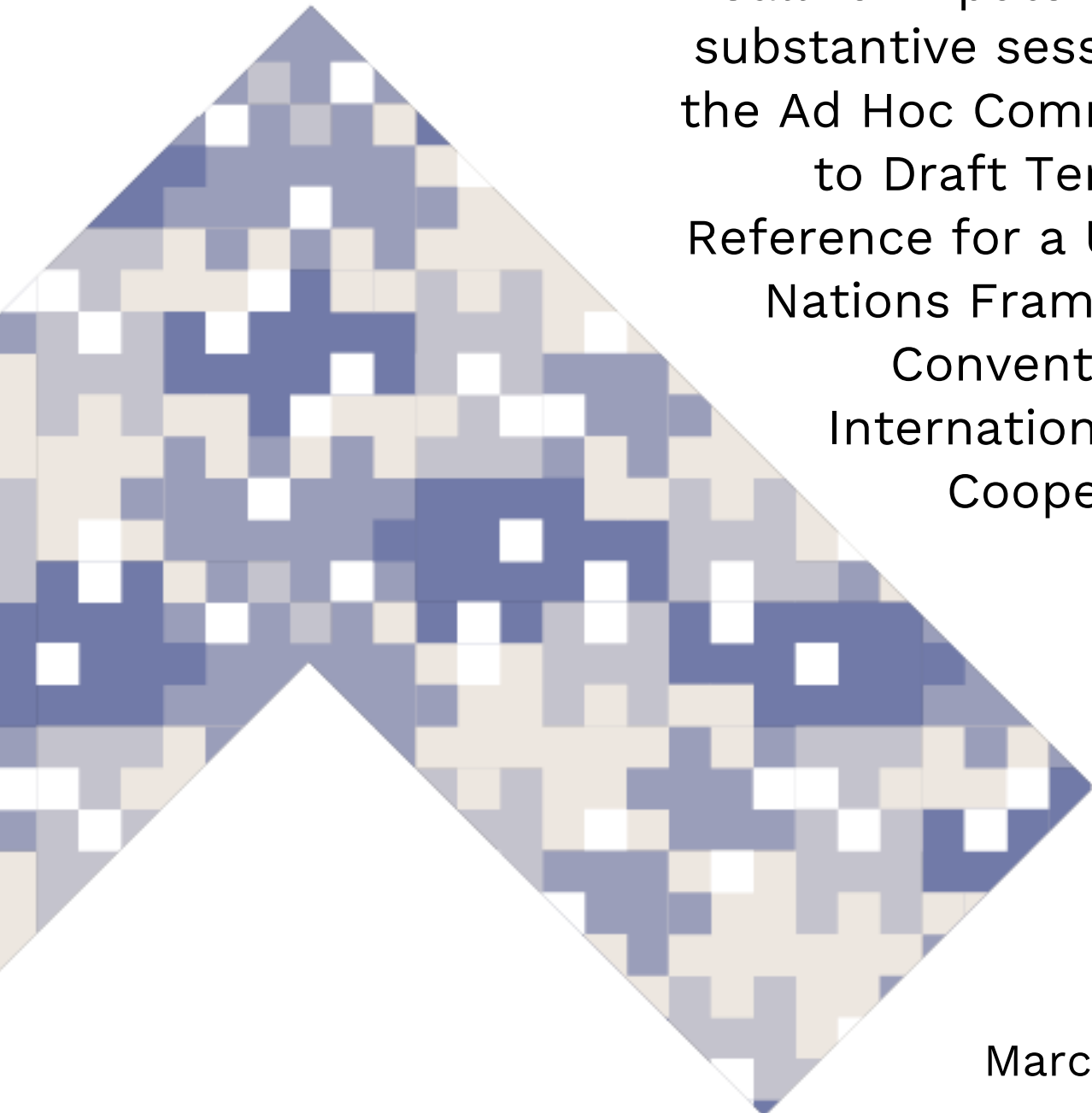




Tax Justice Network submission to the




Call for inputs – First
substantive session of
the Ad Hoc Committee
to Draft Terms of
Reference for a United
Nations Framework
Convention on
International Tax
Cooperation

March 2024



Table of contents

Item 2. Structural elements of a framework convention: substantive scoping.....	3
a. Procedural elements	3
Objective.....	4
Principles	4
Governance	6
b. Substantive elements	7
Item 3. Consideration of simultaneously developing early protocols	7



The Tax Justice Network welcomes the call for substantive inputs to the Committee’s work and commends the Committee for its openness to civil society engagement, and its full public transparency. Noting the regrettable freeze on the United Nations budget, we emphasise the importance of ensuring the Committee’s work continues to be live-streamed, and also of ensuring the possibility of full hybrid participation, including for resource-constrained member countries as well as civil society.

We align ourselves with the joint submission made by the Global Alliance for Tax Justice, and with that of the Centre for Economic and Social Rights. Below we provide inputs under each heading of the proposed provisional agenda for the first substantive session.¹

Item 2. Structural elements of a framework convention: substantive scoping


a. Procedural elements

The broader starting points for the UN framework convention on international tax cooperation (FCITC) include “the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature”; and the commitment in the Universal Declaration of Human Rights that “everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized” (A/RES/41/128).

The specific context is set out in the initiating resolution (A/RES/78/230), which reiterates “the timeliness and importance of strengthening international tax cooperation to make it fully inclusive and more effective, both in procedural and substantive terms, so that Governments may better cooperate in generating financing for development, including through combating illicit financial flows, recovering and returning stolen assets, promoting financial integrity for sustainable development and improving public institutions.”

Tax is our [social superpower](#). Effective taxation allows us to organise in societies to live better, healthier lives together, through the [4 Rs of tax](#): *revenue*, to support inclusive public spending; *redistribution*, to curb damaging inequalities; *repricing*, to regulate socially harmful practices from tobacco consumption to carbon emissions; and accountable and

¹ We gratefully acknowledge, without implication of support, valuable discussions and inputs from the BEPS Monitoring Group, Centre for Economic and Social Research, Economic Commission for Africa, Global Alliance for Tax Justice, South Centre and TJNorge.



inclusive political *representation*, for which tax has been shown to be one of the most important drivers.

The procedural elements of the UN FCITC must ensure that all members states are effectively included in decision making over international tax rules, and fully included also in the benefits of those decisions. Current rules and standards systematically disfavour lower-income countries, who suffer the greatest losses as a share of their current tax revenues. At the same time, OECD member countries and their dependencies are responsible for [the majority of tax abuse](#) and other illicit financial flows, and also suffer the greatest revenue losses in absolute terms – so there is clear scope for *all* UN member states to benefit from effective and inclusive cooperation. Inclusive and effective tax cooperation also requires the design of a dispute resolution mechanism that fosters the resolution of disputes in a transparent way and consistent with the FCITC's objectives and principles.

We ask the Committee to consider the following elements:

Objective

No presently existing body is capable of meeting the FCITC objective of inclusive and effective cooperation, so there is no question of duplication. Furthermore, there is a need to harmonise the existing instruments with the objectives of the UN Charter. Per article 103, "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". A FCITC is the appropriate instrument to govern international tax cooperation under universally shared principles aligned with the UN Charter. Hence, the concern for duplication is not defensible. The convention should clarify the intended inclusivity and effectiveness:

- The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, fully inclusive and effective international tax cooperation. This entails ensuring that states' rights to tax are fully aligned with the economic activity that takes place in their jurisdiction, and that all states are equally included both in the determination of relevant rules and standards, and in the benefits of international tax cooperation including access to information. The continuing power imbalances between states in the global North and South will sometimes require FCITC measures to include common but differentiated responsibilities.

Principles

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties should be guided by the following:

- Agreed aims of taxation. Parties agree that taxation – including the functions of raising *revenues*, delivering *redistribution*, enabling the *repricing* of public goods and ‘bads’, and strengthening political *representation* through the social contract between states and citizens; and in line with the Sustainable Development Goals, to promote human dignity, equality and prosperity, to protect the planet from degradation, to foster peaceful, just and inclusive societies – is crucial to the achievement of the purposes set forth in Article 55 of the UN charter (all human rights without discrimination).
- Sovereignty equality of states. Parties agree that the sovereign equality of states entails creating an enabling environment for fulfilling their human rights obligations as well as mutual respect and support for one another, which requires inter alia the end of ‘beggar-thy-neighbour’ undermining of others’ tax rights and powers, and recognition of the extraterritorial implications of individual jurisdictions’ tax and related regulations, including around financial transparency, consistent with article 28 of the [Universal Declaration of Human Rights](#) and ICESCR ([E/C.12/GC/24](#)).
- Subject-to-tax principle. Parties agree that persons and enterprises should be taxed on all of their income, and that where States have been allocated a taxing right, they owe it to the community of States to use that right. Active income should be taxed where the activities generating it take place. Multinational enterprises should be taxed as single unitary enterprises on their total profits, with profits apportioned between jurisdictions by factors reflecting the real, underlying economic activity to achieve this result.
- Curbing inequalities. Parties recognise the key role of taxation in curbing inequalities, which is often thwarted by failures of international tax cooperation which undermine the scope for progressive taxation of income and assets. Parties commit in particular to address the issue that women are disproportionately likely to face higher taxation despite lower incomes, and less likely to be involved in tax decision-making.
- Self-determination. The right to self-determination recognised in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and ICESCR requires a recognition of the racial component of the right to self-determination for both indigenous people and historically colonised States. Parties agree that the right to self-determination, and the history of systematic economic extraction (often using taxation as a tool), should inform their decision-making under the FCITC.
- Non-retrogression. Parties agree, in line with ICESCR, not to enact backwards-looking policies that would make it harder for people to enjoy their rights. This also provides that states should not, through the adoption of FCITC or any protocols or amendments thereto, reduce their degree of international cooperation including transparency, nor increase any extraterritorial harms caused by their lack of cooperation.

- Transparency. Parties confirm their respect for the importance of transparency, as an important element of efforts to support international tax cooperation and combat illicit financial flows, and as a core attribute of tax systems that strengthen the social contract between States and their peoples. Full transparency will also be a hallmark of the work of the FCITC (including during its negotiation).

Governance

In order to achieve its full potential, the FCITC should create three related bodies:

- Conference of the Parties: supreme body of the FCITC which shall keep under regular review the implementation of the FCITC and any related legal instruments that the Conference of the Parties may adopt, make, within its mandate, the decisions necessary to promote the effective implementation of the FCITC. The CoP should have clear decision-making rules based on UN General Assembly rules, and be empowered, at its first session, to adopt its own rules of procedure as well as those of the subsidiary bodies established by the FCITC, to include decision-making procedures for matters not already covered.
- Secretariat: permanent body tasked with a range of functions including arrangements for CoPs, publication of reports, assistance to Parties compiling information required by the FCITC, and coordination with other international bodies including relevant regional technical bodies such as the OECD and ATAF.
- Subsidiary body for technical advice and implementation: to assist the Conference of the Parties in the assessment and review of the effective implementation of the FCITC, this body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to international tax cooperation, and shall report regularly to the Conference of the Parties on all aspects of its work including to assist the Conference of the Parties in carrying out reviews required by the FCITC, and to assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions. This body shall also host, or otherwise incorporate, a UN Centre for Monitoring Taxing Rights as proposed by the [FACTI Panel](#), with responsibilities focused around the use and provision of data and quantitative assessments, including the stewardship of a UN public registry for tax and fiscal policies, a UN public registry for corporate transparency, and a global asset register, combining public data components and components held privately for tax authorities and other enforcement bodies, to underpin the fight against illicit financial flows including tax abuse; and the preparation of regular analyses of implementation and progress.

b. Substantive elements

The following indicative elements should be considered:

- definitions, use of terms and scope, including with reference to the formal UN statistical definition of illicit financial flows;
- multilateral, automatic exchange of information about financial accounts and related asset classes, without requiring immediate reciprocity from developing countries;
- transparency of beneficial owners of companies, trusts, partnerships and other legal vehicles, through public registers;
- a global asset register, combining public ownership registers and data held privately for tax authorities and other enforcement bodies;
- transparency of the economic activity of multinational groups through annual publication of country by country reporting data at the company level, in line with the Global Reporting Initiative standard Tax:207;
- appropriate public disclosures by national tax authorities including tax policies and practices;
- common principles for effective, appropriately resourced and independent enforcement by tax authorities, and for the disclosure of performance data and aggregate statistics;
- unitary taxation based on formulary apportionment, to ensure corporate tax is levied in the jurisdictions where the underlying real economic activity takes place; and
- common principles for the taxation of wealth.


Item 3. Consideration of simultaneously developing early protocols

The most obvious area for progress is an early protocol on illicit financial flows. First, the global commitment to curb IFFs was agreed in 2015 as SDG 16.4, but so far without any substantive supporting action. Second, this issue is specified in the resolution (A/RES/78/230), and reflects the long history of African leadership here. Third, the key measures that could be agreed here are relatively uncontroversial for global North countries, which are already committed in principle.

An early protocol on IFFs discovery could include three of the substantive elements above:

1. multilateral, automatic exchange of financial information;
2. public registers of beneficial ownership;
3. public country by country reporting.

In each case, the principles and some practices are well established, in OECD and related processes. Opposition to such an early protocol would either indicate resistance to making these standards more effective; or support for the continuing denial of access or benefits to developing countries. Assuming genuine commitment on all sides to the broad aims



of international tax cooperation, there should be a strong consensus in favour.