



Tax Justice Network submission to the

Call for inputs –
Comments on zero draft
Terms of Reference for
a United Nations
Framework Convention
on International Tax
Cooperation




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The Tax Justice Network welcomes the call for substantive inputs to the Bureau's Proposal for Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation and commends the efforts of the Bureau for providing a solid starting point for the next round of negotiations. The Zero Draft builds on the contributions made in the first round by the various States and other stakeholders that were in line with the mandate of the Ad Hoc Committee. We commend the Committee for its openness to civil society engagement, and its full public transparency.


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 **complementary** overall comments and inputs under each heading of the Zero Draft.

Overall comments

We consider that the Zero Draft is **faithful to the mandate given to the Ad Hoc Committee by Resolution 78/230**. While there may be States that would like terms of reference for a less ambitious convention, the draft is consistent with the requirements set out in paragraph 6 of the Resolution. The proposed timeline for the finalisation of the draft ToRs is coherent with the urgency of the issues raised in the contextual elements motivating the Resolution. Reducing the ambition of the current text would risk not taking these requirements and motivation seriously and, therefore, would imply compromising the fulfilment of the Ad Hoc Committee's mandate. Any Member State proposing to go in this direction should **carefully justify** the extent to which its positions do not jeopardise that mandate.

The concerns of some Member States regarding non-duplication in relation to progress achieved so far in other fora and regarding decision-making rules have been reflected in the draft in multiple ways. In addition to the inclusion of paragraph 20, the incorporation of elements such as "the relationship with other agreements" and the provisions on the "Conference of the Parties" and "procedures for amendments and adoption of protocols" as structural elements of the Convention ensure that **these issues will be discussed extensively** during the negotiation phase of the Convention.

Member States should therefore focus, in view of the limited time remaining to fulfil the mandate of the Ad Hoc Committee, on taking the opportunity to **set the parameters for negotiating a genuine Framework Convention**, which means negotiating an instrument whose principles will govern any international tax co-operation initiative. No prior tax cooperation initiative should escape the duty of harmonisation with the framework defined by the Convention - including its parameters of full inclusiveness and effectiveness. Principles of the Convention should be robust enough to cover current priorities, but also guarantee they remain relevant for emerging issues.



As the constitutive instrument for the development of an international legal regime on international tax cooperation, it is essential that the Framework Convention sets out the scope of **the obligation to cooperate internationally in tax matters**. This should have cross-cutting implications for the different sections of the ToRs that will be developed below.

Preamble

Adding the following elements to reaffirm international law along with General Assembly resolutions:

- An **interpretative clause** according to which the Convention should be interpreted coherently with the principles and purposes of the UN charter and the objectives for international cooperation set forth in Article 55 (e.g. economic and social progress and development as well as universal respect for, and observance of, human rights and fundamental freedoms). **In the event of conflict with any other source, States' obligations to cooperate under the UN Charter must prevail**, in accordance with Article 103 of that instrument.
- 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). **This commitment can only be achieved by having international tax cooperation** which allows countries to raise the required tax revenue.
- The recognition that "States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote **a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States**, as well as to encourage the observance and realization of human rights" as established in article 3(3) of the Declaration on the Right to Development.
- A recognition that **tax cooperation is critical to achieve the Sustainable Development Goals (SDGs) as well as to comply with human rights obligations and environmental and climate commitments**. Fair international and domestic tax systems – including their 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 – are crucial for States to mobilize sufficient resources in an equitable way to comply with their wide spectrum of international obligations and commitments.

Principles

Elements that should be added:

- **Equity in the distribution of the benefits of tax cooperation and in standard setting.** All countries should enjoy on an equitable basis the benefits of tax cooperation and they should participate on equal footing in standard setting.
- **Special and differential treatment for developing countries.** The continuing power imbalances between states in the global North and South will require FCITC measures to include common but differentiated responsibilities. This might be operationalized by creating groups of countries with obligations with a different scope. For example, states providing minimal levels of cross-border financial services need not face the same requirements for reciprocity, in respect of the automatic exchange of financial account information, as should significant financial centres.
- **Subject-to-tax principle.** Persons and enterprises should be taxed on all of their income. Where States have been allocated a taxing right, they owe it to the community of States to use that right. Income should be taxed where the activities generating it take place.
- **Unitary taxation.** 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 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 should agree, in line with the International Covenant on Economic Social and Cultural Rights, 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.
- **Participation of civil society and other stakeholders**, in line with the established practice at the United Nations.
- In paragraph 9, the following bullet points could be added
 - Set common principles for effective, **appropriately resourced and independent enforcement by tax authorities.**

- Set common principles for the **disclosure of performance data and aggregate statistics** and create the global infrastructure for administering the global data registries that are deemed necessary for maximizing international tax cooperation.
- Maximize policy synergies for **promoting more progressive tax systems**.

Elements that should be reframed:

- **Transparency.** In clause 9, paragraph 8, delete the words ‘... while respecting the rights to privacy and other fundamental human rights’. This is justified by the fact that **human rights considerations should be incorporated more consistently across the text in standalone paragraphs** (see suggestion on preamble). As a human right, **privacy does not have a superior weight to other fundamental rights**, such as the right to information, and important social and economic human rights, which can only be fulfilled by states through effective taxation. In addition, the ToRs should provide clearer guidance on how to implement the principle of transparency so that it reads as:

“Require transparency and accountability of all taxpayers under the principle of maximum publicity, including effective and inclusive automatic information exchange, public registers of beneficial owners, comprehensive public country by country reporting, public national and global asset registries and public transparency around tax incentives”

Substantive elements

Paragraph 10 should be drafted in such a way that the wording of the commitments to be included in the Convention comprehensively covers all the issues that Member States consider that this instrument should address. To ensure that there is no exclusion of relevant issues we propose the following changes:

- Add commitments in relation to the different aspects of the obligation to cooperate internationally in tax matters, including:
 - the individual duty of each Member State to prevent and remedy the direct or indirect negative impact of one country's tax policy on another country's tax base and tax policy and to act jointly to set adequate standards for **preventing negative spillover effects** in the adoption of domestic tax and financial measures
 - the individual duty to **regulate appropriately the conduct of individual and corporate taxpayers** to ensure that they comply with their tax obligations domestically and in other jurisdictions and to establish cooperative international tax policies to ensure compliance with those obligations considering the challenges of the digital economy and cross-border economic activity
 - the duty to **adopt measures at the national level and to act jointly to curb harmful tax competition** and create an international tax architecture that enables each State to mobilise the maximum

- available resources for the full realisation of the rights of persons under its jurisdiction
 - the **duty to negotiate any new bilateral or multilateral instruments, and to adjust existing instruments, in accordance with the principles and provisions to be established by the Framework Convention.**
- In paragraphs 10, 13 and 15 add “**inclusive and effective automatic**” before “exchange of information”.
- The commitment on the resolution of disputes should not merely aspire 'effective' resolution of disputes. It should be made explicit that the **dispute resolution mechanisms should aim to resolve disputes in line with the objectives and guiding principles of the Framework Convention**: dispute resolution that is accessible to all countries regardless of underlying bilateral treaties, transparent in operation and with adjudication of disputes that take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects.
- Add an open-ended generic clause to cover any other commitments required to meet the objectives of the Convention.

Structural elements of the Framework Convention

- Add to the substantive elements listed in paragraph 13 the following: **"the scope of the duty to cooperate internationally on tax matters"**.
- As part of clause 13bis proposed by the joint civil society submission add the following content:
 “13.bis The framework convention should include the following subsidiary bodies: the UN Expert Committee on International Cooperation in Tax Matters; a Subsidiary body for technical advice and implementation hosting a **UN Centre for Monitoring Taxing Rights**, 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”

Approaches and timeframe for negotiations

- Eliminate “three vice chairs” from paragraph 18
- Replace the word “should” with “could” in paragraph 20.