UNTC 31st Session
Stakeholder Input Template

Help inform the Committee's deliberations on their work programme for 2025-2029 by sharing your perspectives on challenges in tax policy and administration facing developing countries, emerging issues that need attention, and where there is a need for more or different guidance. Submissions should be made in one of the six (6) UN languages. All valid submissions will be published on the UN Tax Committee website in the language submitted.

Submission details: Deadline: **1 September 2025**, Email to: **taxcommittee@un.org**

Subject: Input for UN Tax Committee Work Programme (2025-2029)

INFORMATION

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Type: Other

Organization (unless submission is in personal capacity): Click or tap here to enter text.

BACKGROUND (Maximum of 200 words) – Please respond on page 2.

Please provide a brief summary of your organization's mandate and areas of work unless this submission is in personal capacity, how they relate to international tax cooperation, domestic resource mobilization, sustainable development, or any other field. This will help us map and better contextualize your perspective and input.

WORK PROGRAMME PRIORITIES (Maximum of 2000 words inclusive of any footnotes) – Please respond on page 3.

What should be the Committee's priority issues for 2025-2029? Consider, in light of the Committee's mandate, both the provisional agenda topics and any additional areas you believe are important.

For each priority you recommend, please explain:

a) Why is this issue important for developing countries?
b) What specific guidance or tools should the Committee produce?
c) How would this output be practical and valuable for countries?

SUPPORTING REFERENCES Please list any hyperlinks to relevant reports, studies, or other materials that support your recommendations. Do not attach files. – Please respond on page 4.

BACKGROUND (Maximum of 200 words)

This is a submission in personal capacity by Bob Michel and Tatiana Falcão

WORK PROGRAMME PRIORITIES (Maximum of 2000 words inclusive of any footnotes)

Below, we provide an overview of issues and topics relating to the UN Model Convention which we think the UN Tax Committee should consider in its 2025-2029 term.

1. Taxes functionally similar to income taxes on cross-border services (Article 2 of the UN Model)

In a globalized and highly digitalized economy, the taxation of cross-border services has become one of the most contentious policy topics in international tax. Both in the Global South and in the North, countries witness the rise of non-resident service providers which derive profits from their domestic markets without triggering taxable presence under the traditional rules enshrined in their bilateral tax treaties.

Regarding cross-border digital services, many countries have been dealing with this issue by adopting digital services taxes. Both at the OECD and the UN, countries have been working towards a uniform solution for the allocation of taxing rights on cross-border services that is fairer and more equitable than the solution reflected in the OECD Model, at least from the perspective of the source state. In both fora, debates on the scope of a uniform set of rules for the future have been intense and complicated. Under the (draft) Amount A Convention, rules have been suggested to determine which pre-existing taxes are to be abolished for countries to benefit from the new Amount A taxing right. These rules have turned out to be highly contentious and are believed to be one of the reasons why certain countries continue to object to Amount A. A similar debate has unfolded at the United Nations negotiations on the services protocol in August 2025 with the Secretariat and the Co-Leads of the Workstream suggesting that the protocol cannot just settle allocation issues within income taxes, framed as direct taxes, but should also look at digital services taxes, often frame as indirect taxes, while avoiding capturing other indirect taxes like consumption taxes and sales taxes.

With the last three updates of the UN Model in 2017, 2021 and 2025, the UN Tax Committee has gradually but consistently worked on its own solution on the services problem. With the adoption of article 12AA in the UN Model (2025), it can be said that the UN Model now allocates taxing rights in the form of a withholding tax on gross payments for all relevant types of services paid for by a resident in the source country. In theory, this means that if a countries want a fair and equitable division of taxing rights on cross-border services, they do not need to resort to digital services taxes or similar taxes outside the sphere of the income tax like they are forced to do under the OECD Model.

We believe however that the UN Model, as it stands today, fails to reflect this keystone consequence of its allocation of taxing rights on services: if countries agree on inserting rules like Article 12AA, 12B, 12C or 8A, they should also agree that this allocation of taxing rights applies to income taxes but also to taxes with similar effect to income taxes. For example, if countries agree on the inclusion of article 12B, they should also accept this distributive rule also restricts their power to levy taxes with similar effect as a gross withholding tax on payments for automated digital services, like a DST. Other taxes with similar effect have been adopted by countries in relation to various other types of services, like foreign insurance services (United States), foreign shipping services (Brazil), foreign air transport services (Czech Republic) or foreign online gambling services (United Kingdom).

As various US tax treaties show: if countries can agree on a reasonable allocation of taxing rights in services in a treaty, they are not averse to include the relevant non-income taxes with similar effect into the scope of their tax treaties. As such, many US tax treaties therefore also include the US federal excise tax on foreign insurance premiums into the scope of taxes covered under the treaty if the treaty contains agreed allocation rules on payments to foreign insurance companies, whether characterized as an income tax on gross payments or a excise tax on foreign service providers.

We suggest therefore that the UN Tax Committee revisits Article 2 of the UN Model and analyzes the option of expanding the current legalistic view on 'taxes covered' with an functional equivalent which makes it so that taxes with equivalent effect as income taxes levied on gross payment of fees are also covered.

The point of this revision of article 2 is not to create a model change with dynamic effect on current tax treaties and declare DSTs and 'similar measures' an illegal treaty override. On the contrary, the point of the change is to make clear that for the future, the UN Model suggests to countries to a wholistic instrument in their tax treaties to the coordination of taxes on income and similar taxes levied on cross-border service providers.

2. Taxation of non-resident gambling companies (Article 12C of the UN Model)

In recent years, many countries have witnessed a boom of gambling and betting activities by their citizens. With the rise of the digitalized economy, it is especially the sector of online gambling that has been growing exponentially in recent times. The globalization of the economy further makes it so that online gambling products are often offered by non-resident offshore gambling companies.

The addictive nature of gambling makes it so that the activity is often associated with important negative externalities for society. For this reason, many countries have since long adopted various tax instruments to regulate and tax the industry to make up for the negative externalities caused. With the rise of remote online gambling, so has the use by countries of instruments to tax non-resident gambling operators. In general, these tax measures come in two forms: 1) some countries levy a tax on bets placed online with non-resident gambling companies; 2) other countries levy a specific tax on 'gross gaming yield' of non-resident gambling companies which is the difference between bets placed by residents and wins paid out to residents.

In both cases, the qualification of such tax as an income tax, a turnover tax or an excise tax on services differs across countries. Coordinating such taxes through income tax treaties thus poses a similar problem as illustrated under point one, described above.

Assuming those two types of taxes – a withholding tax on online bets placed abroad and a tax on gross gambling yield derived by non-resident countries – can be considered taxes on income withing the scope of the UN Model, the question arises how they should be qualified under the Model's distributive rules.

We submit that these two types of taxes do not qualify under any of the distributive rules on cross-border services. Both Article 12AA and (old) Article 12A of the UN Model apply to 'fees for services' which are defined as "*payment inconsideration of any services*". In the case of taxes gambling, only a small fraction (known as the 'vigorish' or 'vig' of payments made by

residents can be considered a fee for services. The bulk of the payment is considered a bet but not a consideration for services rendered. The tax instrument used by countries levy tax on the entire amount which includes both fee for service and the bet. As such, those model articles, in their current wording, prevent countries from levying tax on non-resident gambling companies as they ordinarily do currently. The services provided by gambling companies could in theory be covered by Article 12B because this article applies to "*income from automated digital services arising in a Contracting State, underlying payments for which are made to a resident*" which fits the bill in case of remote gambling. However, unlike 'online gaming', online betting (as in: non-talent gaming') is not covered in the list of automated digital services to which article 12B applies. This list is however non-exhaustive so the omission of gambling should, in theory, not prevent the application of 12B. However, we think the omission from 12B is justified. Countries tend to levy taxes on non-resident gambling companies at much higher rates than the taxes levied on other types of digital service provided. The policy reasons to tax online gambling and its negative externalities on society are much different than taxing a non-resident streaming company.
For this reason, we think the UN Tax Committee should analyze whether specific rules on the taxation of non-resident gambling companies are to be included in the UN Model. We think such rules should be modelled to the rules inserted in Article 12C on, rather than including gambling expressly into the scope of 12B on 'insurance premiums'. Just like in the case of remote gambling, article 12C applies to 'insurance premiums' and not on 'fees for insurance services' which are two different concepts. We think taxes levied on bets placed with non-resident gambling companies are largely similar to taxes levied on insurance premiums collected by non-resident insurance companies. We therefore suggest the UN Tax Committee analyzes whether 12C should either be expanded to cover also remote gambling or whether alternative provision in this regard should be added to the Commentary on 12C or whether a new article 12D should be conceived.

3. Capital gains from the resale of emission permits and carbon credits (Article 13 of the UN Model)

In 2014, the OECD amended the Commentary of the OECD Model based on its report on 'Tax Treaty Issues Related to Emissions Permits/Credits'. The changes to the Commentary served to establish that income from the resale of previously acquired emission permits qualified as ordinary business profits within the scope Article 7. In case the emission permits where required for the purpose of carrying out agricultural business, or an international transport business and "*subsequently traded when it is realized that* [the emission permits] *will not be needed*", the profits from trading those permits follow the allocation rules on operational profits set out in Article 6 and Article 8, respectively. Since the 2017 update of the UN Model, the 2014 additions to the OECD Commentary also figure in the UN Model Commentary. If one accepts the doctrine on dynamic interpretation of tax treaties and ambulatory use of the Commentary, it can be said that these changes – presented as 'clarifications of the Commentary' – are applicable to all bilateral tax treaties currently in force.

We believe the UN Tax Committee should reconsider whether these Commentary changes are fit for purpose in the UN Model. The main purpose of the UN Model is to foster domestic resource mobilization, and especially in developing countries. We think the OECD rules of 2014 are inappropriate in this respect because they allocate exclusive taxing rights on the resale of emission permits and credits to emitter countries (often situated in the Global North), rather than to the emission mitigation countries, i.e. countries where the nature-based carbon credit project is located (often in the Global South).

We note that in the OECD's public consultation paper of 2012 which preceded the Commentary changes, the OECD rejected characterization of the income from emission permit sales as capital gains from the alienation of a business assets mainly because under Article 13 of the OECD Model such alternative qualification does not have practical consequences: even if qualified under Article 13, such gains would be taxable only in the residence state of the company making the sale. Article 13 of the UN Model contains a more balanced set of distributive rules on capital gains which, unlike the OECD Model, also allocate rights to the source state on indirect sales of substantially owned companies (article 13(5)). Since the 2021 update, article 13(6) of the UN Model provides that taxing rights are also allocated to the source state with respect to "*gains derived by a resident of a Contracting State from the alienation of a right granted under the law of the other Contracting State which allows the use of resources that are naturally present in that other State and that are under the jurisdiction of that other State, may be taxed in that other State*".

We suggest that the Committee investigates the possibility of expanding this provision to also include any gains from the sale of business assets in the form of emission permits and credits. Alternatively, such gains could be assimilated with gains from the sale of immovable property which would equally result in allocation of taxing rights to the emission mitigating country.

We note that the OECD concluded in 2012 that the granting taxing rights on the indirect sales of credits and permits would hamper liquidity of the market and would be practically difficult because of the lack of traceability. The Committee should look into whether these claims are (still) valid, especially given the rapid changing landscape of regulation of market-based emission mitigation instruments, and if so, whether they can be overcome in the current age of big data.

It should be clear that emission permits and carbon credits are not without controversy, both in terms of climate mitigation effectiveness as well as the negative externalities associated with the private parties establishing credit generating projects in the Global South. For these reasons, we think it is all the more important for the Committee to develop rules incorporating a 'emissions mitigation nexus' by which taxing rights on profits generated in the offset market are in any case granted to the country where the mitigating activity takes place. The Committee should focus on how this type of market-based climate mitigation can be instrumentalized for the purpose of achieving domestic resource mobilization in the South. As such, even if these markets underperform in terms of climate impact and/or create local

negative externalities, at least the profits derived from the trade of such instruments is taxable where they should be taxable.

SUPPORTING REFERENCES Please list any hyperlinks to relevant reports, studies, or other materials that support your recommendations. Do not attach files.