

**June 21, 2024**

The Chairperson  
UN Ad Hoc Committee  
United Nations  
405, 45<sup>th</sup> Street, New York  
NY 100017, United States of America

**Comments on the UN Ad Hoc Committee Bureau’s Proposal for the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation**

**BMR Legal Advocates’ Inputs to the Committee Bureau**

Dear Chairperson,

Thank you for giving us the opportunity to submit these comments to the “Bureau’s Proposal for Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation” (the Zero-draft).

The establishment of the UN was enshrined in fundamental principles such as (i) willing co-operation (ii) a world relieved of the menace of aggression (iii) enjoyment of economic and social security by all and (iv) intention to work together<sup>1</sup>. The UN is thus well positioned to meet the need of all its member countries. The UN’s reporting mechanisms and monitoring bodies allow the broader public to understand the extent to which member countries are meeting their obligations; and to hold member states accountable for their commitments and obligations.

Tax is a social superpower in the conduit of inter-country equality and promotion of a robust global tax policy blends in harmoniously with the idea of Sustainable Development Goals<sup>2</sup>

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<sup>1</sup> <https://www.un.org/en/about-us/history-of-the-un/preparatory-years>

<sup>2</sup> United Nations Department of Economic and Social Affairs, ‘Taxation and the SDGs’, available at < <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/thematic-areas/taxation-and-sdgs#:~:text=The%20mobilization%20and%20effective%20use,sustainable%20development%20in%20other%20ways.>>

(SDGs)<sup>3</sup>. As economic and social interactions transcend national borders, global standards serve to promote transparency, accountability, and a level playing field for businesses and individuals alike. Moreover, coordination and cooperation among nations foster mutual understanding and enable joint efforts in addressing shared challenges such as allocation of resources, distribution of wealth, security of nations and universal public health.

Establishing the foundations of international tax cooperation would be pivotal in palliating the abyss of economic double taxation. It holds fort for a healthy, effective, and all-encompassing regime of tax certainty and accountability. As proponents and practitioners of global best practices in international tax and tax policy, we believe that the United Nations’ efforts have coincided with the need to bolster a transparent, efficient, and stable tax regimes which enhance long term investment, job creation, and long-term economic growth for its Member States. To this end, our submissions vivisect the terms and scope identified in the Zero-draft, with possible suggestions on making the document more inclusive and strategic to the interests of varied stakeholders.

### **General Observations**

Clemenceau is reputed to have said that war is too important to be left to the military and although there are risks, there would also be revelation, in recognizing developmental aspects of international tax matters as far too important to be left entirely to tax experts.

Attention of the Committee may be drawn to the definitions to some of the most contentious terms of discussion set forth in the Zero-draft, which in our view, need a greater degree of specificity. The resolution unequivocally bats for a framework convention on “International Tax Cooperation” which may not be sufficient comfort for global businesses yearning for the much-elusive certainty on elimination of double taxes. Secondly, the draft makes a perfunctory mention of extremely warm-corn topics such as illicit financial flows and fairness that need a greater elm of definitiveness.

Paragraph 7 (c) of the Zero-draft<sup>4</sup> uses the phraseology, “fair, transparent, efficient, equitable, and effective, international tax system for sustainable development”. Advocating for a wholesome

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<sup>3</sup> Tax funds our public services, strengthens our economies and makes our democracies healthier – all of which create the opportunities that make a good life possible for everyone.

<sup>4</sup> United Nations Department of Economic and Social Affairs Financing for Sustainable Development, ‘Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation’

Convention would necessitate the juxtaposition of this broad canvas with a well-defined, lineal system of standards. These terms merit a separate, comprehensive definitional umbrella for practitioners, academicians, and tax administrations to appreciate the nuances of these terms as per tenets of public international law.

Equity is often mentioned as a subsidiary source of international law. To be sure, equity and fairness is a general principle of law recognized by all civilized legal systems and would be incorporated into international law through the avenues of multilateral forums, through a system of clear, impressionable definition clauses. Many equitable principles have been vigorously employed in international dispute settlement. One such concept is “abuse of right,” where an international actor is recognized as having the freedom to engage in certain conduct but is barred from pursuing a course of action in certain circumstances or in a particular fashion, without involvement and consent from the other parties. The Committee could take a cue from the same and cast to stone a hard-lined instrument of equity through the body of the Convention. Domestic Resource Mobilization (DRM) is another term-in-question.

UN’s formal statistical definition of “illicit financial flows”<sup>5</sup> already includes cross border tax abuse by both multinational companies, through profit shifting, and wealthy individuals hiding assets and income streams offshore whether illegal or not. Considering such established definitions, therefore, there should be no doubt as to the extent to which some terms should be interpreted. Furthermore, the whole purpose of covering “tax-related illicit financial flows” is to develop rules that are less prone to aggressive tax avoidance to the detriment of Global South countries. The Committee should synchronise this definition into the objectives of the Convention.

If one starts from different premises or a different diagnosis of the problems of the current tax architecture, states may entrench themselves in rhetorical positions that do not address what other countries are calling for. An ecosystem enshrining cooperative compliance, mutual agreement processes and speedy dispute resolution mechanisms should be top-drawer concern for the Committee while scoping the substantive elements of the Convention. Additionally,

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(June 07, 2024), available at < <https://financing.desa.un.org/sites/default/files/2024-06/Zero%20draft%20ToR%207%20June%202024.pdf>>

<sup>5</sup> Peter Chawla and Tatiana Falcao, ‘*Illicit Financial Flows: concepts and scope*’, FIDO Working Paper Series (December 2016), pgs. 4-5, available at < [https://www.un.org/esa/ffd/wp-content/uploads/2017/02/Illicit-financial-flows-conceptual-paper\\_FfDO-working-paper.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2017/02/Illicit-financial-flows-conceptual-paper_FfDO-working-paper.pdf)>

appropriate capacity building and training, and increased commercial awareness should be identified as an important substantial element by the Committee.

### **Crystallising the time frame for negotiation**

Paragraph 16 of the Zero-draft mentions: “The intergovernmental negotiating committee would be convened in New York and initially in 2025 and 2026 meet for [number] sessions, of a duration of [number] working days each”. The number of working days should ideally not exceed five per session. While it could be insisted that initial meetings be in-person, flexibility could be accorded for later sessions so that countries can balance their budgets.

Public consultations are sacrosanct to evaluate the probable best practices emerging from a new policy, and it would help the Committee uplift its own prophecy of inclusiveness and accountability.

### **SPECIFIC COMMENTS:**

The Zero draft states “A United Nations framework convention on international tax cooperation should include a clear statement of its purposes. In that regard, it should:

- a. Set out the fundamental principles that ensure the full inclusiveness and effectiveness of the international tax cooperation in terms of substance and process.”**

#### **Comments:**

While the fundamental principles suggested are noble and set out the true spirit of the framework, they are rather abstract and may lead to member states taking significant positions for not converging by relying on the principles alone. The Committee could consider setting tangible principles based on outcomes that all members are seeking to achieve. Some examples of these could be:

- The principle that when a business interacts with a country, the country obtains the right to tax the business – This is merely an expansion of an already agreed upon principle (when physical presence was the only means of interaction).
- The principle that taxpayers operating in a global world need to be afforded a reasonable level of certainty on protection from double taxes.

- The principle that taxpayers are entitled to a mechanism to attain finality on double taxation disputes.
- The principle that all governments should arrive at their fair share of taxes based on accessing a common set of documents
- The principles of transparency, fairness, and integrity in all dealings with other countries and with taxpayers.

**“b. Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State;”**

Comment:

The governance framework can recognize that treaties have a shelf life and should be revisited every decade in order to ensure that they can be renewed in a swift and transparent manner such that tax related challenges are effectively addressed. The governance framework could lay down guidelines for the same.

The suggestion that framework convention should also include the following additional substantive and procedural elements: *definitions; relationship with other agreements, instruments and domestic law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources and mechanisms; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for amendments and adoption of protocols*, is indeed critical and implementation modalities together with relationship with domestic law should be established as a priority in the first round of discussions.

**“c. Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing tax-related illicit financial flows and other challenges to strengthening domestic resource mobilization.”**

**Comments:**

The OECD negotiations have demonstrated that the notion of “inclusive, fair and transparent.” is relative and there’s a standoff when countries cannot agree on what is inclusive, fair and transparent. It would be useful to have more concrete principles.

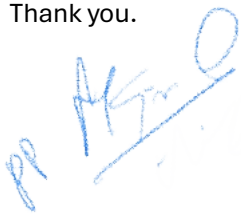
**In Conclusion:**

Agility in responding to changing business & economic landscape is the most pressing need for international tax rules today.

Second is the need to foster a spirit of trade and adventurism amongst businesses to let them explore the world, to let humanity have the choice to access to the global range of technology, products and services and not bog down businesses with multiplicity of rules and plethora of compliances, or leave consumers straddled with the cost of these.

Lastly, administrations need to work smartly and make efficient use of technology to gather and exchange information and to enforce tax rules such that all administrations receive taxes in accordance with principles on taxing rights agreed under the aegis of the UN framework.

Thank you.



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