

Re: Civil society submission in response to call for written comments on the zero draft of the terms of reference for a UN Framework Convention on International Tax Cooperation

Submitted to	Submitted by
Mr. Ramy Youssef Chair of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation	<ol style="list-style-type: none">1. Rural Reconstruction Nepal (RRN), in special consultative status with ECOSOC since 19972. LDC Watch, in special consultative status with ECOSOC since 20123. South Asia Alliance for Poverty Eradication (SAAPE)4. Asian People’s Movement on Debt and Development (APMDD)5. PRAKARSA, Indonesia6. Monitoring Sustainability of Globalisation (MSN), Malaysia7. Centre for Environmental Justice, Sri Lanka8. Pakistan Kissan Rabita Committee (PKRC), Pakistan

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It is challenging for countries to prevent illicit financial flows and the resulting cases of tax avoidance and evasion. The possibilities of profit manipulation by multinational corporations (MNCs) through transfer pricing or by parking their money in tax havens with low tax rates, banking secrecy, and lenient regulations pose significant concerns for countries striving for effective domestic revenue mobilization. Even high-income countries, with their well-resourced and high-capacity revenue authorities, struggle to address MNCs’ tax abuses within the global tax architecture, which incentivizes the persistence of tax havens. Therefore, even if revenue authorities in developing and Least Developed Countries (LDCs) are adequately capacitated, they cannot compete with the resources and expertise behind multinational corporations’ tax avoidance strategies without fundamental changes to global tax regulations. Essentially, the need for post-COVID economic recovery, coupled with the urgency to tackle the crises brought by climate change and economic inequalities, as well as the challenges of taxing the digital economy, is increasingly driving countries, both in the global North and the global South, to urgently pursue fundamental reforms to the global tax system.

While we acknowledge some earlier attempts to reform international tax architecture, these initiatives fall far short of accommodating the longstanding demands—particularly from developing countries—for a more just, inclusive, and democratic tax system. Civil society movements in the global South have been calling for a fair say in the drafting and implementation

of global tax rules. In this context, we strongly welcome the zero draft Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation (hereafter ‘FCITC’) prepared by the Bureau of the Committee in accordance with General Assembly resolution 78/230 and the decisions of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. We believe that the international tax architecture would have to be the subject of an inclusive discussion under the auspices of the United Nations, where the system of one member nation, one vote would allow countries to be treated equally. We appreciate the opportunity to submit written comments on the zero draft ToR for a UNFCITC. Please find our submission of comments on the draft ToR below.

Objectives

One of the key objectives of international tax architecture should be to uphold the principle of progressive taxation, ensuring that the wealthy contribute proportionately more. The draft lacks the explicit mention of ‘progressive’ taxation.

The rationale for an ‘inclusive, fair, transparent, efficient, equitable, and effective’ international tax architecture should be clearly articulated, linking it with the need to raise revenue for financing the care economy; ensuring social security and quality public services for all; providing climate financing for mitigation, adaptation, and loss and damage; and reducing inequality.

Principles

We appreciate the emphasis on a universal approach with due consideration for countries in special situations, acknowledgment of sustainable development needs, simple and easy-to-administer rules, and respect for the sovereign rights of countries to determine the policies and practices of their domestic tax systems, as well as the focus on fairness in the allocation of taxing rights while requiring transparency and accountability. In addition to these, the FCITC should include the following elements as its overarching principles:

- While ‘inclusiveness’ is emphasized, the participation of civil society must be ensured in line with Article 71 of the UN Charter, as well as UNGA Resolution 53/144 and ECOSOC Resolutions 1993/80 and 1995/304.
- Tax policy should be linked with climate financing and the polluter pays principle. This requires mentioning progressive green taxes, elimination of harmful tax exemptions and subsidies for fossil fuel industries, and taxing extractive industries.
- Tax policy should align with the principles of social justice, including human rights and gender equality principles.
- The term “progressive” should be emphasized with the overarching goal of expanding the tax base and taxing the wealthy. This includes introducing new taxes such as wealth taxes, polluter-pay taxes, inheritance taxes, and corporate windfall gains taxes.

- The core approach to international taxation - global minimum effective tax rates, taxes based on global corporate profits, and taxing businesses based on where they operate - should be outlined although the details should eventually come up in the protocols.

Substantive elements of the Framework Convention

While there is mention of ‘equitable’ taxation of MNCs and ‘effective’ taxation of high-net-worth individuals, alongside a commitment to modeling tax measures to address environmental challenges, there should be a distinct mention of the ‘progressive’ component of taxation, with tax rates increasing at the highest levels of income, wealth, and emission of pollutants.

The Framework Convention should express a commitment to move the tax system of countries away from easy-to-implement but regressive indirect taxation and instead expand tax base through direct taxation. This includes introducing new forms of direct taxation such as wealth tax, inheritance tax and corporate windfall gain tax, with the objective of funding essential public services and reducing inequality.

The international financial architecture should recognize that developing countries and LDCs require fair financing that does not generate more indebtedness or fiscal conditionalities. Instead, it should respond to the need for historical reparations and enable a sustainable, inclusive, and decolonial economic transition. To this end, the Framework Convention should propose sustainable domestic revenue mobilization measures through reforms in international taxation architecture that reduce reliance on debt.

Capacity building

Developing and least developed countries may not necessarily have the infrastructure needed to exchange information and should be capacitated for this purpose. They should be trained in international tax practices to build their negotiation capacity. Technological upgrades and training will be required to implement effective systems for collecting and monitoring financial data, for which developing and least developed countries should receive financial and technological support. Meanwhile, we welcome the provision of support for covering the travel and local expenses of relevant stakeholders to ensure their participation in the negotiation of the framework convention.

Structural elements of the Framework Convention

While the zero draft agrees in principle to include the following procedural elements – definitions, relationships with other agreements, instruments and domestic law, review and verification, exchange of information, 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 – we draw attention towards the following

comments, mostly demanding more specificity on these issues and their inclusion in the subsequent protocols:

Relationships with other agreements

The draft ToR should emphasize linking tax policies with Internationally Agreed Development Goals (IADGs), obligations, and commitments, including those related to human rights, gender equality, quality public services for all, promotion of well-being and quality of life, sustainable development, and environmental protection, including climate action and adherence to the principle of common but differentiated responsibilities (CBDR), including addressing inequalities within and between countries.

Conference of the Parties and Secretariat

The structure must be fair, transparent, democratic, and inclusive. The Secretariat should be neutral and equally accountable to all countries. Reporting requirements of the Parties should be clearly stated. A mechanism for the inclusive and meaningful participation of civil society organizations should be ensured.

Subsidiary bodies

We suggest incorporating the existing UN Expert Committee on International Cooperation in Tax Matters as a subsidiary body of the FCITC. Furthermore, to monitor and support the FCITC's implementation, we propose establishing a UN public registry for tax and fiscal policies, a UN public registry for corporate transparency, and a global asset register.

Dispute settlement mechanisms, and procedures for amendments and adoption of protocols

Settlement of disputes, enforcement, and compliance issues, including mechanisms for ensuring effective implementation of the Convention, should be clearly outlined. The FCITC should be fully anchored within the UN system and adhere fully to its rules, procedures, and ways of working. While welcoming discussions on other international tax initiatives and proposals, the governance structure, based on the UN principle of 'one country, one vote' should not be compromised. It should be inclusive, with participation from all member states, especially encouraging the participation of developing and least developed countries.

Exchange of information, data collection, and analysis

The framework convention should include commitments on transparency and exchange of information for tax purposes. The scope of automatic exchange of information should be expanded, and measures to exchange information on various classes of assets should be advanced. Developing and least developed countries need support on building their capacity to introduce and administer effective systems for collecting and protecting tax and income data. A moratorium

period should be introduced during which these countries can receive information on a non-reciprocal basis.

Beneficial ownership and reporting

The zero draft does not mention beneficial ownership. Transparency regarding ultimate beneficial ownership is crucial to combat tax evasion taking place through anonymous shell companies in tax haven countries. A public Global Asset Registry should be created, and a beneficial ownership mechanism should be enacted. Country-by-country reporting should be essential for countries to effectively tax multinational corporations and prevent transfer pricing. Governments themselves must also be made responsible towards disclosing information on tax incentives and exemptions provided.

Specific priority areas to be addressed in early protocols

While the priority areas are well-defined and comprehensive, it is crucial to acknowledge the urgency of climate change impacts, which are already observable and disproportionately harming people. Therefore, “tax measures on environmental and climate challenges” must be a significant point of discussion in the early protocols to be developed concurrently with the negotiation of the framework convention. These measures should not be relegated to an “additional point” that ‘might be the subject of future protocols.’”

Approaches and time frame for negotiation

We emphasize the need for the early finalization of protocols through a representative consultative process, paving the way for the adoption of an FCITC. The protocols should be developed in line with the objectives and overarching principles stated in the zero draft, as well as in the above-mentioned comments.

The zero draft has envisioned the formation of an intergovernmental negotiating committee elected on the basis of equitable geographical representation for the purpose of negotiating the early protocols. We demand transparency with regards to all intergovernmental negotiating sessions.

While we appreciate the commitment to cooperation and consideration for the work of other national, regional, and global forums to the extent of finding synergy, we would like to draw attention to the importance of ensuring that the participation of CSOs is fully inclusive and effective.

We will continue to follow up on the progress of the Ad-Hoc Committee through national, regional and global civil society processes. We look forward to contributing constructively in any subsequent consultations.

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