Tax Justice Network submission to Workstream I on Co-Lead's Zero Draft of UN Framework Convention on International Tax Cooperation (post-Fifth Session)

28 August 2026

Abstract

We welcome the progress made by the Co-Lead with the draft text, and the opportunity to comment. In what follows, we address each of the five parts of the Convention in turn. We will provide more detailed commentary on individual articles on our dedicated website. In most of Parts I and II, we make relatively targeted drafting suggestions only. There remain, however, a number of more substantive concerns. We propose major reforms to Part III, and to a number of articles in Part IV. The latter, addressing institutional arrangements, is crucial to the future functioning of the framework body and the Conference of the Parties, and ultimately to the ability to deliver on – and be held accountable for – the agreed objectives. Part V also raises a number of significant questions for effective operation, and here we also make substantive proposals. We highlight three key elements:

- First, the objectives and principles agreed in the ToR should not be diluted nor downgraded, and a chapeau should be introduced to link them directly to the commitments.
- Second, the commitments made by signatories – even when 'high level' – must by definition go beyond the status quo, if the Convention is to deliver meaningful progress.
- Third, Part IV must provide for the collation, analysis and publication of data such that the framework body can fulfil its role of delivering a fair allocation of taxing rights between states, and also be accountable for doing so. The success of the entire process depends on this.

Part I: Introduction

The INC has a clear UNGA mandate, in resolution 79/235 and the inclusively negotiated ToR. Since **articles 1 and 2** hew closely to the ToR objectives and principles, substantial changes would only make sense in response to an overwhelming majority of member states.

We note with disappointment the attempt by a small minority in the Fifth Session to challenge the content and even the standing of these items. This should be dismissed. The suggestion to relegate these items to the preamble is without precedent, and absurd. This section of the Convention could instead be strengthened by introducing a chapeau, to link objectives and principles to commitments.

For commitments to be meaningful, they must require signatories to commit to things that are beyond, or in substance different from, the status quo. This is not in conflict with the idea of a 'high level' Convention. Rather, it is the means to ensure that a high-level Convention is not rendered meaningless. As article 21 indicates, there will be different ways to deliver on commitments made. A high-level Convention will not specify these at the level of detail of future instruments, but commitments made must nonetheless be *other than* the status quo.

On **article 3**, we encourage adoption of existing UN definitions where these have been agreed by all member states. We remain concerned by some member states raising definitional questions over even the most well-used concepts. For the Convention to be future-proof, specific definitions are unnecessary in most cases. Concepts such as HNWIs are intuitive, and other instruments (e.g. a protocol on the topic) will determine definitions as required. Article 3 should be realistic and not exhaustive: it is not a dictionary.

Part II: General provisions

On **article 4**, we support Jamaica's aim to introduce more ambitious language aligning with sustainable development, and of Mexico and Brazil to refer to UN human rights obligations including with respect to gender and race.

The benchmark for the Convention will be set by **article 5**, with future success judged on whether a fair allocation of taxing rights has been achieved. This entails comprehensive data, discussed in Part IV below, so that the framework body can be effective and also hold itself accountable.

Article 5 could be strengthened by adding a paragraph specific to the case of MNEs, given the distributional aspects of profit allocation (without prejudice to the application of fair allocation to all other cases). It should make explicit that a fair allocation requires that taxing rights are allocated with respect to *all* global profits of each multinational group, recognising each as a unitary business; and that the distribution of those rights is a function of the underlying, real economic activity.

In **Article 6**(3), the commitment to "ensuring effective taxation" is made subordinate to respecting state sovereignty. But sovereignty is strengthened by international cooperation that allows effective taxation, including of HNWIs, so the two aims are not in principle in conflict. However, the condition of "respecting each State Party's sovereign right to determine the design, structure and level of taxation within its national tax system", risks guaranteeing a 'right' to undermine others' sovereignty by fomenting a race to the bottom. In addition, "structure and level" are elements of tax design and so the inclusion of this term is tautological.

Article 6 could also be strengthened by explicit reference to cooperation beyond a member state's own taxes; by noting the importance of cooperation in relation to non-tax illicit flows also, so that there is no inadvertent restriction (even if a state does not have laws against corruption, bribery etc); and by explicit reference to the aim of progressivity.

A paragraph could be added on fair allocation, since HNWIs often generate wealth in multiple jurisdictions, while being taxed in their country of residence. This could make explicit that wealth owners' current tax residence or location should have no role in denying taxing rights to jurisdictions where wealth was generated and assets are located.

Article 7 should be retitled 'Illicit financial flows, including tax avoidance and evasion', to remove the artificial limitation to only flows deemed 'tax-related'. The explicit exclusion of flows that "give rise to a revenue claim" but may be driven primarily by *non*-tax motives, would create a needless impediment to cooperation; and all illicit financial flows, however motivated, are likely to give rise to revenue claims.

The Convention should ensure international tax cooperation that can tackle all illicit financial flows effectively. Article 3 can then use the full definition agreed by member states in the UN "Conceptual framework for the Statistical Measurement of Illicit Financial Flows". In addition, the sentence "to ensure the effective taxation of income and profits from tax-related illicit financial flows [..]" is overly restrictive. We suggest instead the "effective recovery of revenue and assets foregone due to illicit financial flows".

We commend the clear structure of **article 8**. The term "at international and regional levels" should be deleted. Harmful tax practices must be identified and challenged on a common, global basis to be effective. Reference to "income" should be deleted to ensure the article remains broadly relevant, including to wealth. The commitment should be to "develop and adopt" rather than to "explore".

On **Article 9**, we note that dispute resolution does not and should not happen only at competent authority level. Judicial dispute resolution of cross-border tax disputes will remain important and is generally more transparent. Tax courts around the world require additional instruments of cooperation, including information sharing and international witness calling. A part 2(c) should therefore be added, providing that states "*shall explore and develop instruments for cross-border cooperation geared towards national tax courts and other judicial tax dispute resolution bodies.*"

On **Article 10**, we reiterate that framework conventions do not usually allow reservations. Concerns raised about supposed constitutional constraints echo arguments that have been used to shield banking secrecy. This INC needs to negotiate forward-looking tools required for implementation, with countries committing to provide one another the widest possible measure of administrative assistance. This entails granting the COP a mandate to develop necessary instruments.

While a self-standing article on EOI remains important, **Article 11** is inappropriate. It risks duplicating existing language such that many norms for exchange of information would be imported from an exclusionary OECD process. We propose instead a single paragraph article providing a mandate for the COP to negotiate a basis for genuinely inclusive and effective exchange of information, in line with Convention objectives and principles.

Part III: Technical assistance

Article 12 requires comprehensive revision. As currently drafted, the UNFCITC might not have a coordinating role for capacity building, and parties could resort to other bilateral and multilateral relations. The first paragraph should establish a subsidiary body to coordinate centralised provision of technology transfer, technical assistance and capacity building, given the synergies available. This would also address threats of individual states using TA-CB provision for foreign policy aims.

Part IV: Institutional arrangements

Article 13, following conventions for UN special bodies like WHO, and others such as OECD, should provide a (non-exclusive) list of instrument types that the COP can developed, following reference to protocols in paragraph 4(d), to clarify its scope for action. In respect of 4(c), the COP must also be empowered to take actions following a review. These could include instigating a dispute under article 22, and issuing interpretative notes to settle doubts on Convention interpretation or application.

Article 14 should provide explicitly for the creation of individual subsidiary bodies or sub-bodies (e.g. of the implementation body) for each commitment, to ensure delivery; and to allow for cross-working between two or more such bodies. These would be made up of national delegates, with secretariat technical support – with implications for the level of secretariat staffing that should be addressed in **article 17**.

Article 14 should also create a technical subsidiary body: a Centre for Monitoring Taxing Rights (CMTR) as UN FACTI Panel proposed. This will be responsible for the data collection and analysis set out in article 15 which is crucial to the ability of the framework body to function effectively. The common analysis of pooled information will:

- Ensure that COPs are able to rely on robust assessments of progress towards a fair allocation of taxing rights;
- provide delegates with country-level evaluations of proposals so that all can participate equally during negotiations;
- allow for timely identification and quantification of new challenges as they arise; and
- provide sufficient public information for the framework body itself to be accountable for progress towards the fair allocation of taxing rights.

Article 15 should specify that data be provided to the CMTR by states within the shortest reasonable period, to ensure analysis is current. A non-exclusive list of initial data could be included. Confidentiality standards associated with exchange of tax information should not apply, to prevent undue obstacles to effectiveness and to reflect the vital importance of public transparency to develop confidence.

Article 15 should specify minimum data to be *published* by states (and provided to the CMTR for collective publication), ensuring public accountability for progress. This minimum public data should include multinationals' country by country reporting, as requested by the African Group and highlighted in the *Compromiso de Sevilla* (ideally according to the Global Reporting Initiative standard, with the potential for ideally according to the CMTR to implement later improvements such as specifying sales by destination); plus aggregate data on financial accounts held by non-residents, both subject to and not subject to information exchange, and the equivalent jurisdiction-level aggregates as declared by residents to tax authorities. The CMTR should also be mandated to combine beneficial ownership registers into a global asset register, supporting member states to ensure comprehensive public BO data is available for all major classes of assets and ownership vehicles. These may constitute an article 15 *bis* on 'Public Data Disclosure', or be retained in the current article 15, retitled to 'Data Collection, Disclosure and Analysis'.

Article 16 should take a broad perspective on review and verification. It should include review of existing instruments such as BTTs in light of Convention objectives. It should include explicitly the option of conducting joint reviews in connection with other relevant processes (e.g. other UN conventions to the achievement of which international tax cooperation is relevant). The potential for negative review findings to form part of the basis for disputes, under article 22, should be noted.

In **Article 18** we support the argument of Brazil to provide dedicated contributions to the framework body *in function of* countries' allocation of contributing capacity to the UN (although from a separate budget), with the potential of an additional contribution from the main UN budget. Appropriate resourcing for the framework body is essential, with its level not disproportionate in relation to funding for current, non-inclusive arrangements.

Part V: Final provisions

Article 22 appears inspired by UNCAC Article 66, except that submission to arbitration of unresolved negotiations is changed into (non-binding) reconciliation. We agree with countries' opposition to arbitration in tax matters, but this article deals with disputes regarding the provisions of the framework convention. The disputes in scope are only state-state level disputes, and not disputes involving taxpayers. As in all framework conventions, a venue for binding dispute resolution is necessary but can be optional. The second paragraph should therefore be extended as follows: "*or to the International Court of Justice in accordance with the Statute of the Court.*" Countries should be allowed to opt-out of the ICJ referral possibility.

This exception aside, the framework convention should not incorporate any reservation options in **article 25**. Allowing opt-outs of certain aspects of effective and inclusive international tax cooperation is incompatible with the object and purpose of the UNFCITC, and thus in violation of article 19(c) of the Vienna Convention.