

South Centre Inputs on Workstream I - Co-Lead's Draft Framework Convention Template

6 March 2026

I. Abstract

The South Centre welcomes the [Co-Lead's Draft Framework Convention Template](#) and submits inputs on the draft Articles of the UN Framework Convention on International Tax Cooperation (UNFCITC).

Art 5: "Jurisdictions" to be replaced with "State Parties", term "value creation" approached with caution or deleted altogether and restriction on taxing only "a portion" of income to be removed.

Art 6: Parties can 'adopt' rather than 'explore' coordinated approaches for taxing High Net Worth Individuals.

Art 7: Tax-related Illicit Financial Flows should be defined, and include tax avoidance and evasion in the definition. The commitment should also ensure effective taxation by the Party affected by TIFFs and regular data-based monitoring of TIFFs.

Art 8: Harmful Tax Practices can be defined, with differentiated responses for harmful practices by taxpayers and State Parties.

Art 10: Wording can be modified to remove potential barriers for developing countries to receive information. The Article should also avoid enabling suppliers of information to impose their standards on the receivers of information, which can replicate existing asymmetries faced by developing countries.

Art 15: It can clarify that commitments are non self-executing and do not automatically override existing tax treaties or domestic law provisions. Existing instruments such as BEPS MLI, MAAC, etc can be incorporated into the UNFCITC as protocols, to build on existing work and address the concerns of duplication.

Art 16: Conference of State Parties should consist of Finance Ministers, be able to take any decisions it deems fit and make decisions by majority voting.

II. General Comments

The South Centre commends the Co-lead, secretariat, and Intergovernmental Negotiating Committee (INC) for the progress under WS I and for the preparation of the [Co-Lead's Draft Framework Convention Template](#).

The draft represents significant and welcome progress. Moving forward, priority must be given to the provisions related to the Conference of the States Parties (Article 16) and Relation with Other Agreements, Instruments and Domestic Law (Article 15). The question of how the UN Framework Convention on International Tax Cooperation (UNFCITC) will co-exist with the status quo cannot be avoided and requires a workable solution. One potential solution is detailed in the next section.

It is reiterated that the central problem of the status quo, which is the OECD-led regime, is that it is not based on international law. The OECD-led regime has created a plethora of bodies such as the Inclusive Framework on BEPS, Global Forum on Transparency and Exchange of Information for Tax Purposes, Global Forum on VAT, Forum on Harmful Tax Practices, Inclusive Forum on Carbon Mitigation Approaches, Forum on Tax Administration, etc. What is common to all these bodies is that none of them have their own treaty and their own Secretariat (as established by the treaty).

An international organization by definition has its own treaty, own Secretariat and functions on the basis of clear and publicly available rules of procedure. For example, the UN's treaty is the [UN Charter](#), the World Trade Organization's treaty is the [Marrakesh Agreement](#), the World Intellectual Property Organization's treaty is the [WIPO Convention](#), etc. This treaty basis enables these international organizations to produce international standards through a process that is based on international law.

The OECD-led regime's bodies by contrast have no such basis in international law, and for this very reason function in an opaque and arbitrary manner and remain under the *de facto* control of the OECD's Member States. Attempts to portray the Inclusive Framework as an "international organization" are therefore factually inaccurate and politically misleading.

The UNFCITC is thus the treaty that can provide the international tax system with a firm foundation of rule of law, enabling stability and predictability in rule-making, and addressing the fundamental gaps of inclusiveness and effectiveness.

For these reasons, the governance-related provisions of the UNFCITC are more important than the technical provisions. Bad governance will guarantee bad technical

solutions, confirmed by the experience of the status quo, and good governance is therefore essential to ensure fair and equitable technical solutions.

III. Specific Comments

Below are specific comments and inputs for Articles 4 to 16:

Article 5 – Fair Allocation of Taxing Rights

The current draft is a welcome improvement. However, there is no reason why this should be restricted to apply only to “a portion” of the income. The phrase may be deleted.

The term “jurisdictions” should be replaced by “State Parties”, in line with standard UN practice where jurisdictions are represented by the Member States of which they are a part.

The concept of “value creation” in practice has been used for *profit attribution*, not for the allocation of taxing rights, which are two separate concepts. Taxing rights are generated by domestic law, and tax treaties allocate taxing rights using the concepts of residence and source, not “value creation”. This by itself means value creation has no place in this article.

Further, there is no universally agreed definition of what “value creation” means, which is an inherently subjective concept. As applied in transfer pricing it has meant more profit attribution to industrialized developed countries through the supply-side driven “Functions Assets and Risks” based Authorized OECD Approach (AOA).

Attempting to define value creation to include demand side factors such as sales or user contributions (for highly digitalized businesses) is also a risky endeavor that in practice can lead to continued cross-border disputes.

As an example, applying value creation for a product designed in the US, manufactured in China and sold in Nigeria can lead to disputes over where “more” of the value is created. Is it the US, where the R&D took place, or China where the manufacturing capacity exists, or in Nigeria where the consumer exists, without whose demand no profit is possible?

The existing formulation which clearly mentions markets, revenues or economic activities adequately captures both demand and supply side factors. Hence “value creation” should be approached with caution if not outrightly deleted from the text.

The revised text could thus be:

*“The States Parties agree that all jurisdictions **Parties** in which ~~value is created~~ markets are located, revenues are generated or economic activities take place have a right to tax ~~a portion of~~ the income generated from such activities and shall take such actions as are necessary to ensure a fair allocation of taxing rights among all such jurisdictions, including renegotiation of existing tax agreements that are inconsistent with this article.”*

Article 6 – High Net Worth Individuals (HNWI)

Given the record levels of wealth inequality in the world today, as well as the relative ease with which HNWIs can locate their assets offshore, international coordination is essential for their effective taxation. Accordingly, para 3 of the Article can use stronger language in this regard, as proposed below:

*“The States Parties shall ~~explore~~ **adopt** coordinated approaches to ensuring effective taxation of high-net worth individuals.”*

Article 7 – Tax-Related Illicit Financial Flows, Tax Avoidance and Tax Evasion

The current wording of the commitment applies only to Tax-Related Illicit Financial Flows (TIFFs), not tax avoidance and tax evasion. Further, TIFFs need to be defined to avoid ambiguity and confusion. As mentioned by the South Centre in previous submissions, TIFFs should clearly include both tax evasion and aggressive tax avoidance, based on the agreed UN definition.

The title of the article can also be changed to clarify this, such as: *“Tax-Related Illicit Financial Flows **including** Tax Avoidance and Tax Evasion”*

The Article can also be updated to ensure that the TIFFs are effectively taxed where they originate. For example, profits shifted to a tax haven through TIFFs should be effectively taxable by the origin jurisdiction.

Action against TIFFs will be aided by regular data-based monitoring on progress. SDG 16.4 is supposed to provide data on “Total value of inward and outward illicit financial flows” but no global data is available even after more than 10 years of the adoption of the SDGs. The commitment can thus include a requirement for State Parties to report on IFFs and detailed measures to ensure this is done can be spelled out in a future protocol or through other actions by the Conference of the State Parties.

Article 8 – Harmful Tax Practices

Clarity is required on what is meant by “Harmful Tax Practices” (HTP). This can be provided either in the definitions Article, or in a future protocol, or detailed through binding or non-binding guidelines or recommendations issued by the Conference of State Parties.

There can be a differentiation between HTP by taxpayers and by Member States, with different treatment of both.

The Conference of the State Parties can, once the UNFCITC comes into effect, create a peer review mechanism to monitor compliance, encourage best practices, and support effective implementation of this Commitment by all Parties in a transparent and non-discriminatory manner.

Article 9 - Mutual Administrative Assistance

The term ‘effective assessment’ in para 1 can be replaced with a broader term such as ‘effective tax administration and enforcement’.

Article 10 – Exchange of Information

The term “foreseeable relevance” can be removed from para 1 as it could be used to restrict information access to developing countries.

Para 1(b) risks narrowing the definition of tax-related illicit financial flows to exclusively trade mis-invoicing. As such, it can be revised as follows:

“(b) transaction information to allow the matching of exports and imports of goods and services to facilitate the detection and prevention of tax-related illicit financial flows;”

Para 2 of the article is overtly restrictive on the use of information received. This is particularly restrictive given the close links between tax avoidance, evasion and criminal activities. The restrictions can be removed and softened as appropriate.

Further, para 2 also risks imposing the standards of the giver of information onto the receiver, which can continue replicating the barriers on information access faced by South Centre Member States and other developing countries. The relevant part of the text can hence be revised as:

“2. Any information received by a State Party under paragraph 1 or Article 9 shall be treated as secret in the same manner as information obtained under the domestic laws

~~of that State and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the requested Party as required under its domestic law.”~~

Article 15 - Relation with Other Agreements, Instruments and Domestic Law

It can be clarified in this Article that the Commitments are not self-executing and do not automatically override existing tax treaties and domestic law.

Coming to the more fundamental question of how the UNFCITC will relate to existing instruments such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("BEPS MLI") and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("MAAC"), **it is proposed that the BEPS MLI, the MAAC and similar instruments be brought before the UNFCITC's Conference of State Parties for potential adoption as protocols, with or without amendment.**

This solution can function as follows:

1. The INC reaches a political agreement that the MAAC and BEPS MLI can be potentially included into the UNFCITC as protocols, with amendments as necessary.
2. The UNFCITC comes into effect after the required number of countries sign and ratify it.
3. The Conference of State Parties (COSP) of the UNFCITC – which would potentially include the same countries who are Parties to the BEPS MLI and MAAC – setup subsidiary bodies to examine whether any changes are needed to the BEPS MLI and MAAC to make them more acceptable to the COSP.
4. The subsidiary bodies can recommend that either changes are needed or not needed. If changes are needed, the Parties can negotiate the appropriate changes and then incorporate the instruments into the UNFCITC as modified protocols.

The above solution addresses the concerns of developed countries of duplication, incentivizes them to join the UNFCITC, conserves and builds on the valuable elements of existing standards, avoids a split in the international tax system, allows developing countries to modify standards which they were not involved in drafting so they are better reflective of their needs, and rationalizes and integrates the international tax governance architecture, providing more equity, revenue benefits, certainty and stability for both developed and developing countries, as well as for taxpayers and tax administrations.

Article 16 - Conference of the States Parties to the Convention

This is possibly the single most important Article in the entire UNFCITC. The Conference of State Parties (COSP) is the “UN Tax Body” fought for by the developing world for decades and its structure and functions are of fundamental importance. These must contain three core elements:

- a) **High Level Representation:** The COSP should ideally consist of Finance Ministers as the ultimate decision-makers. The items for decision can be prepared by technical subsidiary bodies.
- b) **Wide-Ranging Powers:** The COSP should be able to take any decisions it deems fit to achieve the objectives of the UNFCITC. Similarly, it should be able to *enforce* these decisions through a range of tools, with Protocols being just one of them. Other examples could be guidelines, recommendations, model legislation, toolkits, handbooks, manuals, etc. The COSP should also be able to choose whether these tools are on the legally binding or advisory nature of the spectrum, depending on the nature of the problem to be solved.
- c) **Democratic Decision-Making:** Non-negotiable is that the COSP makes decisions democratically, by majority voting.