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South Centre Inputs on Workstream I - Co-Lead's Zero Draft of UN Framework Convention on International Tax Cooperation

26 August 2026

I. Abstract

1. Fair allocation of taxing rights should include nexus factors based on OR rather than AND, should specify methods of allocation and be de-linked from the objective of avoiding double taxation.
2. Conference of State Parties (COSP) should be the supreme body for administering the Framework Convention (FC) and the Protocols and any other instruments it produces, be able to undertake any actions required to achieve the objectives of the FC, and should be able to make decisions by simple majority vote.
3. Amendments to the FC and adoption of the FC's Protocols should also be by simple majority.
4. All Parties to the FC and its Protocols should make regular and mandatory contributions. This is essential for the success of the UNFCITC. Sustained non-payment should result in denial of voting rights, as is currently the practice in the UN General Assembly under Article 19 of the UN Charter.
5. The commitment to align existing tax treaties, domestic law and other instruments with the FC and its Protocols should not be request-triggered, and the COSP should determine a timeline by when it will be done.
6. The COSP shall take measures to ensure that no Party to the FC is prevented from implementing the Convention, its Protocols and any other instruments adopted by the COSP.

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 Co-Lead's Zero Draft of UN Framework Convention on International Tax Cooperation.

III. Specific Comments

Below are specific comments and inputs for all the Articles:

Article 3 – Definitions

- The definition states "the principal purpose, or one of the principal purposes". This creates ambiguity as the burden of proof of both is different. The term "one of the principal purposes" is preferred.
- The example of smuggling and trafficking is inappropriate and thus the definition can end at "non-tax crimes".

Article 5 – Fair Allocation of Taxing Rights

Para 1

- The reference to "economic activity" in the previous draft is more appropriate and should be brought back. Accordingly, "real economic contribution" should be deleted.
- The nexus factors should be connected by OR rather than AND, as in the previous draft. This means that the presence of any one of the factors can trigger taxing rights.
- It should be where "users **are located** and data **is generated**", since data can be located anywhere once generated, but its generation itself will be unique to a specific country.
- The Article should specify the methods through which the fair allocation will take place in practical terms, as mentioned in the proposals submitted by the Africa Group and India.

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Para 2

- Fair allocation of taxing rights should be de-linked from the objective of preventing double taxation or double non-taxation. Fair allocation of taxing rights is itself the objective.

Article 6 – High Net Worth Individuals

- The Article must contain a definition of High Net Worth Individuals (HNWIs). This should also allow for differences among jurisdictions. One approach can be to allow each country to set its own threshold, which applies to actions undertaken to fulfil the commitment and are mutually acceptable to the Parties. Eg – Country A may have threshold of USD 100,000 while Country B may have threshold of USD 1 million. However, if A sends B a request for information on its taxpayer, then B must accept A's definition even if it does not match its own.

Para 1

- Retain stronger language of "develop and implement".

Para 2

- Delete "general". Taxpayer specific data is required for implementing this commitment.

Para 3

- Replace "explore" coordinated approaches with "adopt".
- Delete mention of sovereignty since it is already included in the Principles.

Article 8 – Harmful Tax Practices

- A definition for Harmful Tax Practices (HTP) is required. However, putting it in the Article risks it becoming obsolete quickly. The Conference of State Parties (COSP) should thus develop the criteria for it and update it over time as needed.
- The COSP should determine what is effective taxation of such practices. Further, it should guide what measures can be undertaken to tackle such practices.

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Para 1

- Delete "international and regional levels", since this is a Convention for the whole world.
- Insert "non discriminatory", to ensure that principles and standards to combat HTP are uniformly applied.
- Previous wording of "neutralize their distortive effects" can be retained.

Para 2

- Retain stronger language of "develop, enhance and implement".

Article 9 – Prevention and Resolution of Tax Disputes

Para 1

- Language should be more binding and not connected to capacities.
- Article will be anchor for the protocol on dispute resolution, so para 1 should identify the scope which should be cross-border disputes.
- Dispute prevention and resolution should be linked to the ultimate goal of Domestic Resource Mobilization.
- Add phrase "through negotiation or consultation" to further prevent disputes.
- Anchor for implementation required, hence need for a new para 3 which says Parties shall develop the tools to implement this commitment.

Para 2

- It should clarify that the scope is cross-border disputes.
- Insert "transparent" and "simple" in 2(b).
- Insert dispute prevention in 2(b).
- End the para at "timely manner" so there is no mention of "taxpayers and tax authorities involved". This will avoid creating unintended rights and obligations.

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Article 10 – Mutual Administrative Assistance

Para 1

- Delete “cooperate to” so it is simply, “shall promote”.
- Retain linkage of exchange of information “in accordance with Article [10]”.
- The phrase at the end of para 1 which says “in each case, under procedures..” is unclear and creates uncertainty. It can be deleted and replaced by a new para 3 which says, **“State Parties shall develop guidance, protocols or additional instruments as may be necessary for the effective implementation of this Article”.**

Para 2

- Retain stronger language of “identify and eliminate administrative barriers”.
- Delete conditionality “if and as appropriate” at end of para 2 to ensure the barriers are actually eliminated.

Article 11 – Exchange of Information

Para 1

- The COSP should develop criteria for the term “foreseeable relevance”, either in a protocol or other instruments.

Para 2

- It can be modified such that there is no limit on the use of information as long as the supplying jurisdiction is fine with it.

Para 6

- Replace “limitations” with “guidance”.

Article 12 – Capacity Building and Technical Assistance

- Include language that says Parties should commit to build their own capacity and allocate resources to it so as to fulfil the obligations under this Convention.

Para 2

- Delete “drive accountability in the use of mobilized resources”.

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- Can include the words "upon request" to make technical assistance more demand driven.

Article 13 – Conference of the States Parties to the Convention

The following should be included or clarified within the Article:

- Decision-making by the COSP shall be by simple majority.
- The COSP is the supreme body for the administration of the Framework Convention (FC) and the Protocols and any other measures adopted by the COSP. This can include guidelines, model law, toolkits, etc.
- The COSP should be able to take any actions necessary for achieving the objectives of the Convention.
- When the COSP meets to discuss Protocols, only Parties to the Protocol should be able to make decisions, while other Parties can join as Observers. The decisions taken should not bind those who are not Parties.
- The COSP can take into consideration the work of other bodies but it should not be subordinated to those other bodies. It can be clarified in the rules of procedure how the consideration of existing work should be practically done.
- The COSP shall meet at least annually.
- The COSP can create subsidiary bodies.
- The rules of procedure should apply to the FC, the COSP and its subsidiary bodies.
- The COSP shall adopt financial rules for itself, its subsidiary bodies and the Secretariat to ensure sufficient funding for the implementation of Convention, Protocols and any other measures adopted by the COSP.
- At each session, the COSP shall adopt a budget for the financial period until the next session.
- The COSP shall decide on disputes relating to the FC and its Protocols.
- The COSP shall review its own processes and the method through which this review shall take place should also be detailed.
- Meetings of the COSP and its subsidiary bodies should be Member State led, however observers should be allowed to participate in these meetings in an advisory and supportive capacity.
- States who have signed but not ratified should be allowed to attend as Observers.

Para 4

- Add "through any actions it deems necessary" after "shall facilitate".

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Para 4b

- Add "while not being bound by them" after "cooperation".

Para 4e

- Delete "and recommend any action it may deem necessary in that respect" because it gives the impression the COSP has open-ended powers only for capacity building and technical assistance.

Article 14 – Subsidiary Bodies

The following should be included or clarified within the Article:

- At the bottom, Working Groups can be established which look at specific Commitments as well as technical issues relating to Protocols and other outputs by the COSP (eg Model Laws or guidelines). Some examples can be Working Groups on tax treaties, dispute prevention and resolution and the digital economy. These will not have decision making power but only technical expertise. These will give recommendations to the subsidiary body for implementation mentioned in para 1.
- The subsidiary body for implementation can consider the recommendations of the Working Groups and then report to COSP who takes the final decisions.
- The subsidiary body for implementation can meet in advance of COSP meetings and contribute to the agenda design of the COSP meeting and prepare draft decisions for the COSP.
- Paras 2 and 3 can be shifted to Article 13.
- The subsidiary bodies should have equitable and regional representation.
- They can also include Subject Matter Experts, where appropriate, to enhance their effectiveness. Such experts should not have voting rights, which should be exclusively for Member States.

Para 1

- Implementation recommendations should be made as and when they arise and not as per the interval of five years which is too long. The interval, if it has to be kept, can be shortened to no more than two years.

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Article 15 – Data Collection and Analysis

- This Article is redundant and can be merged with Article 16 on Review and Verification.

Article 16 – Review and Verification

- Elaborate on frequency of reports and specify whether format will be developed by the COSP or by individual Parties.
- Include safeguards for data protection.
- Include measures through which the COSP can respond to non-cooperative jurisdictions.

Article 17 – Secretariat

- It should be clarified that the Secretariat will support both the COSP and its subsidiary bodies.
- It should have balanced and equitable representation from the Parties.
- It is unclear what is the reason for para 3e. Different international organizations have different mandates and Memberships and it is not clear why the Secretariat of the UNFCITC should be mandated to coordinate with them. Further, it is not clear who should be coordinated with or why. This para should be deleted.
- Para 3f states the obvious. A secretariat cannot function without making administrative and contractual arrangements. Further, the Secretariat of the UNFCITC should be strong and capable of providing the Parties with what they need. Excessive outsourcing or contracting of its functions to outside entities will indicate that the Secretariat is incapable of doing its own job. This should be avoided and thus this para should be deleted.

Article 18 – Financial Resources

- Parties should make regular and mandatory contributions to the budget for the implementation of the FC.
- Parties whose arrears equals or exceeds the amount of the contributions due for the preceding two full years should be penalized by having their voting rights denied. This would be in sync with existing practice within the UN General Assembly, as governed by Article 19 of the UN Charter.

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- An exception can be made for Parties who are unable to contribute due to reasons beyond their control.

Article 19 – Amendments to the Convention

- Amendments should be by simple majority.
- Only Parties to a Protocol should be able to vote on amendments to those Protocols.

Article 20 – Relation with Protocols

- Procedures for amending the FC should also apply to the Protocols.
- Protocols shall be administered in accordance with the FC.
- Where there is a conflict between the FC and the Protocols, then the FC should prevail.
- Adoption of Protocols should also be by simple majority.

Article 21 - Relation with Other Agreements, Instruments and Domestic Law

- Para 1b can provide for consultations where incompatibility with commitments is detected, allowing Parties to assess whether any amendment is needed, without assuming renegotiation is always required.
- The second sentence of para 3 should be deleted, so it is no longer request-triggered.
- Para 4 should state that the COSP should develop a timeframe by when existing international tax agreements and related instruments will be brought into conformity with the FC.
- The renegotiation of tax treaties can be implemented through the UN Fast Track Instrument, where groups of countries can jointly renegotiate their tax treaties. Lessons from the BEPS MLI should be considered to make this process more efficient and effective for developing countries.
- The COSP shall take measures to ensure that no Party to the FC is prevented from implementing the Convention, its Protocols and any other instruments.