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# PROPOSAL FOR A UNITED NATIONS CONVENTION ON TAX

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by Tove Maria Ryding • March 2022

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The European Network on Debt and Development (Eurodad) is a network of 60 civil society organisations from 29 European countries. We work for transformative yet specific changes to global and European policies, institutions, rules and structures to ensure a democratically controlled, environmentally sustainable financial and economic system that works to eradicate poverty and ensure human rights for all.

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## OVERVIEW

In 2019, the Africa Group at the United Nations called for a UN Convention on Tax, and stressed that the group believed such a convention could help to tackle illicit financial flows.<sup>1</sup> The following year, the proposal of negotiating a UN Tax Convention was also included in a ‘Menu of Options’ produced as part of a UN process to consider how the international community could respond to the Covid-19 crisis.<sup>2</sup>

Similarly, in February 2021, the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (the FACTI Panel) – which had been set up by the President of the UN General Assembly (at the time Nigeria) and the President of the UN Economic and Social Council (at the time Norway) – also included the proposal for a UN Tax Convention as a key recommendation in its final report.<sup>3</sup>

Annex 1 to this document contains a proposal for what a UN Convention on Tax (UNCT) might look like. The proposal is a ‘Framework Convention’, and – as described in the comments to the Convention – the basic format and structure broadly follow approaches used in other UN conventions. The UN has produced framework conventions to cover a number of issues ranging from combating climate change (the UN Framework Convention on Climate Change<sup>4</sup>) to protecting the ozone layer (the Vienna Convention for the Protection of the Ozone Layer<sup>5</sup>) and controlling tobacco consumption (the WHO Framework Convention on Tobacco Control<sup>6</sup>). There is a significant variation in terms of how many substantive obligations they contain, but common for them all is that they outline a set of core agreements that make up a basic structure and a system of international governance in relation to the issue that they cover. This includes an objective, key principles and core institutions. They are also designed to be supplemented by further decisions, and they provide the structures and processes required for these future agreements to be developed and adopted.<sup>7</sup>

A Framework Convention allows governments to take a stepwise approach towards strengthening international cooperation and governance on tax and tax-related illicit financial flows. This means that the central parts of the international system can become operational while more detailed agreements are still being negotiated. It would be a legally binding document, which would require national ratification to enter into force. In addition to the Convention itself, the following supplementary decisions would be foreseen:

- Decisions by the Conference of the Parties (COP): This would include decisions to provide further detail on the concepts outlined in the Convention, as well as to make the foreseen institutions operational and promote implementation of the government obligations and commitments contained in the Convention. It would also, for example, include decisions to mandate negotiations of protocols under the Convention;
- Protocols under the Convention: Protocols would represent additional legally binding agreements, which would require separate ratification at the national level. They would be negotiated to address and elaborate on specific elements of the Convention.

### *Why is there a need for a new UN Convention on Tax?*

Some aspects of illicit financial flows are addressed through UN conventions, including the UN Convention Against Corruption<sup>8</sup> and the UN Convention Against Transnational Organized Crime.<sup>9</sup> However, this is not the case for tax-related illicit financial flows, including tax evasion and avoidance, which continue to cost countries hundreds of billions of dollars in lost tax income every year.<sup>10</sup>

These problems are global in nature and require global solutions. A key part of the purpose of the UN is to provide such solutions, including by leading intergovernmental negotiations where all countries can participate as equals. In the absence of an inclusive, intergovernmental UN process, a number of ‘global’ tax standards and agreements have been developed by other forums where countries have not been able to participate on an equal footing, and where transparency to the public has often been very limited. This includes the ‘Inclusive Framework on Base Erosion and Profit Shifting’ of the Organisation for Economic Co-operation and Development (OECD), where negotiations on new corporate tax rules have taken place over recent years. In 2016, when the Inclusive Framework was set up by the G20 and OECD, it was stressed that all countries would be able to join and participate “on an equal footing.”<sup>11</sup> However, countries are only able to become members of the framework on the condition that they sign up to implementing the OECD/G20 2015 package on Base Erosion and Profit Shifting.<sup>12</sup> This package of agreements, which runs to almost 2,000 pages, was negotiated through a process from which over 100 developing countries were excluded.<sup>13</sup> Since the package was very central to the overall agenda and outline for the Inclusive Framework,<sup>14</sup> it can be argued that the members of the Inclusive Framework were – from the very beginning – divided into those that had made the rules, and those that had agreed to take the rules as they were. Today, the forum is far from inclusive, since over one third of the world’s countries are not participating in the negotiations.<sup>15</sup>

The specific proposal for a UN Convention on Tax, which is outlined in Annex 1, would entail a fundamental reform of international tax cooperation. This includes introducing transparent and inclusive decision-making where all countries can negotiate as equals. Furthermore, it is deliberately designed to replace major elements of the existing international tax system. In particular, it foresees the creation of a multilateral structure that would, to a large extent, replace the complicated network of bilateral tax treaties that make up the current international tax system.

It also foresees the abolishment of the transfer pricing system and its arm’s length principle, along with the approach of taxing multinational corporations as independent entities. Instead, the proposal is that multinational corporations should be taxed on the basis of their global consolidated profits, with taxing rights being allocated between governments based on an agreed formula in a system that is supplemented by a minimum effective corporate tax rate.

Furthermore, it proposes major changes in the way taxing rights are distributed between governments. It aims to remove biases that favour richer and larger countries, as well as introduce a system that gives higher priority to the interests of developing countries, and it generally incorporates a recognition of the unique needs, interests and capacities of developing countries. With this, the proposal aims to respond to a number of the strong concerns with the existing international system, and to integrate a number of ideas for reforms that have been put forward by numerous UN Member States, civil society organizations, international experts and other actors.

### ***Relationship between a UN Convention on Tax and existing international agreements and forums***

Through existing UN agreements, governments have recognised that fair, progressive and effective tax systems are vital for the achievement of other UN goals and commitments.<sup>16</sup> The proposal for a UN Convention on Tax aims to build on these agreements, as well as strengthen the links between taxation and existing government obligations and commitments in relation to human rights, environmental protection, equality and the Sustainable Development Goals (SDGs). The underlying aim is to propose a UN Tax Convention that can increase economic justice at the global level, and at the same time respond to the urgent need for new and additional public resources to combat the major global challenges of our time.

In relation to links to other international tax bodies, the proposed UN Convention on Tax would incorporate the existing UN expert committee on tax as a subsidiary body, which would feed into the work of the Convention. However, the Convention would not be linked to any existing forums outside of the UN, such as the OECD's 'Inclusive Framework on Base Erosion and Profit Shifting'. One central reason for this is that linkages would bring a clear risk of carrying over, rather than resolving, the above-mentioned problems in international decision-making on tax. Furthermore, the exercise of linking international bodies with differences in mandates, membership, procedures, history and institutional arrangements would bring up a host of separate legal and political complications, which would risk hampering the work of the new Convention.

However, the negotiation and adoption of a UN Convention on Tax would not necessarily mean that all existing approaches, concepts and experiences from other tax agreements are lost. Nothing would prevent governments from putting forward proposals for the adoption of measures that are similar to those that already exist in other agreements within the framework of the UN. Provided that the parties to a UN Convention on Tax would agree on endorsing existing approaches, these could not only be carried forward, but could also, for the first time, be incorporated in a truly global structure.

This document is intended as a conversation starter and a basis for further discussions. Comments, questions and reflections are welcomed and encouraged and can be sent to Tove Maria Ryding ([tryding@eurodad.org](mailto:tryding@eurodad.org)).

## ANNEX 1

# UNITED NATIONS CONVENTION ON TAX

### PREAMBLE

*The Parties to this Convention,*

*Conscious* of the vital importance of fair, equitable, progressive, transparent and effective tax systems and related domestic resource mobilization for the prospect of States to achieve sustainable development and fulfil international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the Sustainable Development Goals,

*Concerned* that inefficiencies and injustices in international and national tax systems, as well as related illicit financial flows, and in particular international tax avoidance and evasion, are causing an increase in inequality within and among countries and causing major losses of domestic resources for States,

*Noting* that the impacts of international corporate tax avoidance harm all countries, and that the consequences are particularly devastating for developing countries,

*Recalling* the Doha Declaration on Financing for Development, and in particular the intention to step up efforts to enhance tax revenues with an overarching view to make tax systems more pro-poor, as well as the acknowledgement of the need to further promote international cooperation in tax matters,

*Reaffirming* the commitments made in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development to enhance revenue administration through modernized, progressive tax systems, improved tax policy and more efficient tax collection, as well as to scale up international tax cooperation. *Reaffirming also* that efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing states and African countries,

*Reaffirming also* the commitment to significantly reduce illicit financial flows by 2030, as contained in the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development,

*Reaffirming further* the commitment to reduce inequality within and among countries, as contained in Goal 10 of the 2030 Agenda for Sustainable Development,

*Reaffirming further* the commitment to strengthen the means of implementation of the Sustainable Development Goals, as contained in Goal 17 of the 2030 Agenda for Sustainable Development, and in particular the commitment to strengthen domestic resource mobilization, including through international support to developing countries, as contained in target 17.1 of the Agenda,

*Welcoming* the report of the High Level Panel on Illicit Financial Flows from Africa,

*Welcoming further* the report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda,

*Affirming* that tax systems, policies and practices must be gender just, and that full and effective participation of women at all levels of policy-making and implementation must be ensured,

*Affirming also* that every State has the sovereign right to decide the policies and practices of its domestic tax system and the responsibility to ensure that such policies and practices do not cause damage to, or undermine the effectiveness of, the tax base or system of any other State. *Noting* in this context that international cooperation is vital for achieving fair and effective domestic tax systems,

*Reaffirming* that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions,

*Reaffirming also* that multinational corporations should pay taxes in the countries where economic activity occurs and value is created, in accordance with national and international laws and policies,

*Recognizing* the importance of providing legal certainty and international coherence with respect to tax systems, policies and practices,

*Affirming* that the distribution of taxing rights between countries must be fair, equitable and in line with the goal of reducing inequalities among countries,

*Affirming also* that States should budget with an aim of fulfilling international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the Sustainable Development Goals, and ensure accountability and transparency to the public,

*Affirming further* that lack of transparency, including international information sharing, is a key underlying cause of tax-related illicit financial flows,

*Noting* the special circumstances related to taxation of extractive industries and the need to ensure effective taxation of this sector,

*Noting also* that digitalization of the economy has exacerbated existing problems relating to corporate tax avoidance and evasion, and the importance of ensuring fair and effective taxation of digital services,

*Noting further* that fair, equitable, progressive, transparent and effective environmental taxation can contribute to the achievement of international commitments related to environmental protection,

*Determined* to scale up international tax cooperation and strengthen efforts to combat tax-related illicit financial flows, including international tax avoidance and evasion,

*Also determined* to ensure that our tax systems are fair, equitable, progressive, transparent and effective, and that they contribute to the achievement of sustainable development and the fulfilment of international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the Sustainable Development Goals.

Have agreed as follows:

### ***Comments on the Preamble***

The preambular paragraphs of a Convention provide a context for its provisions and can, in particular, play an important role in guiding the interpretation of the Convention.

### ***Comments on specific preambular paragraphs***

**Preambular paragraphs 1 and 2:** These paragraphs spell out the overall motivation and focus of the Convention, as well as the key concerns that the Convention should address.

**Preambular paragraph 3:** This paragraph provides recognition of the fact that, while international corporate tax avoidance harms all countries, the consequences are particularly devastating for developing countries. This point has been stressed in several reports and publications, including the International Monetary Fund (IMF) Policy Paper *Corporate Taxation in the Global Economy* (2019);<sup>17</sup> the UN University World Institute for Development Economics Research Working Paper *Global distribution of revenue loss from tax avoidance* by Alex Cobham and Petr Janský (2017);<sup>18</sup> and the IMF Working Paper *Base Erosion, Profit Shifting and Developing Countries* by Ernesto Crivelli, Ruud A. de Mooij and Michael Keen (2015).<sup>19</sup>

In highlighting the particular impacts on developing countries, the emphasis of preambular paragraph 3 is different from preambular paragraph 2 of the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which notes that base erosion and profit shifting "is a pressuring issue not only for industrialised countries but also for emerging economies and developing countries."<sup>20</sup>

**Preambular paragraphs 4-8:** These paragraphs recall key decisions and reaffirm key commitments made in previous UN decisions. For details on these decisions, see Annex 2.

**Preambular paragraphs 9-10:** These paragraphs welcome the following two key international high level reports produced on the issue of illicit financial flows, including tax-related illicit financial flows:

- The report of the High Level Panel on Illicit Financial Flows from Africa, also known as the Mbeki Panel's Report;<sup>21</sup> and
- The report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda,<sup>22</sup> also known as the FACTI Panel's Report.

**Preambular paragraph 11:** There is a rapidly growing awareness of the fact that tax systems, policies and practices can exacerbate gender inequalities, and that progressive taxation is central to the issue of gender justice.<sup>23</sup> In response to this, preambular paragraph 11 firstly affirms that tax systems, policies and practices must be gender just. Secondly, it addresses the importance of ensuring participation of women at all levels of policy-making and implementation. The latter part echoes a point that is also central in Sustainable Development Goal 5 on gender equality and empowerment of women and girls, and in particular target 5.5, which states: '*Ensure women's full and effective participation*

*and equal opportunities for leadership at all levels of decision-making in political, economic and public life*. The wording in preambular paragraph 11 is a modified version of a preambular paragraph contained in the Convention on Biological Diversity<sup>24</sup> and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (the Nagoya Protocol).<sup>25</sup>

**Preambular paragraph 12:** This paragraph affirms two central elements of international tax cooperation, namely the sovereign right of every State to decide on the policies and practices of its domestic tax system, and the obligation of each State to avoid causing harm to the tax bases or systems of other States. This balance of rights and obligations follows a model that is also known from international environmental law. For example, Principle 2 of the Rio Declaration on Environment and Development<sup>26</sup> highlights that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

The same principle is, for example, reflected in preambular paragraph 6 of the United Nations Framework Convention on Climate Change (UNFCCC)<sup>27</sup> and preambular paragraphs 4 and 5 of the Convention on Biological Diversity.<sup>28</sup>

**Preambular paragraph 13:** In line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), this paragraph affirms that indigenous peoples have the right to autonomy or self-government in matters relating to ways and means for financing their autonomous functions. This point is included in the Convention due to the fact that it can have relevance in tax matters, and to ensure that the sovereign rights of States to make decisions in tax matters, as outlined in preambular paragraph 12, is balanced with their obligation to respect the rights of indigenous peoples. Since it is a recapture of Article 4 of the UNDRIP,<sup>29</sup> it is a *reaffirmation*.

**Preambular paragraph 14:** This paragraph affirms that multinational corporations should pay taxes to the governments of countries where economic activity occurs and value is created. Since this point was also included in paragraph 23 of the Addis Ababa Action Agenda (see Annex 2) it is a *reaffirmation*.

**Preambular paragraph 15:** This paragraph recognises the importance of providing legal certainty and international coherence with respect to tax systems, policies and practices. On the point of legal certainty, this paragraph has similarities with preambular paragraph 9 of the Nagoya Protocol.<sup>30</sup>

**Preambular paragraphs 16-21:** These paragraphs focus on specific sub-issues that the Convention addresses, namely distribution of taxing rights; budget accountability of States in the context of international goals, obligations and commitments; transparency; the special circumstances related to extractive industries; and environmental taxation.

**Preambular paragraphs 22-23:** These paragraphs aim to capture the overall objectives of the Convention. For more information, see the comments on Article 1 below.

## **PART I: OBJECTIVES, PRINCIPLES, USE OF TERMS AND GENERAL OBLIGATIONS**

### ***Overall comments on Part I***

In some conventions, the objectives and principles are contained in preambular paragraphs. However, many conventions have these elements outlined in specific Articles, which is also the approach suggested in this UN Convention on Tax. Both objectives and principles are very central elements that serve to guide the future development of the Convention.

### **Article 1** **OBJECTIVES**

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are to promote international tax cooperation; to ensure that tax systems are fair, equitable, progressive, transparent and effective; and to combat tax-related illicit financial flows. These objectives shall be pursued with a view to reducing inequality within and among countries and mobilizing financing for governments to fulfil international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the achievement of the Sustainable Development Goals.

### ***Comments on Article 1: Objectives***

There are different approaches and preferences regarding how to structure objectives of international conventions. The approach chosen in Article 1 is somewhat similar to that of the Convention on Biological Diversity, which operates with three objectives included in its Article 1,<sup>31</sup> namely conservation of biological diversity; sustainable use of the components of biodiversity; and fair and equitable benefit sharing in relation to genetic resources.

In the case of the draft convention outlined in this document, Article 1 includes the following three objectives: international tax cooperation; ensuring that tax systems are fair, equitable, progressive, transparent and effective; and combating tax-related illicit financial flows. The objective-statement in Article 1 also specifies the underlying and cross-cutting intention of reducing inequalities and mobilizing financing for governments to fulfil international goals, obligations and commitments.

Due to the fact that the objective-statement includes three objectives, the terms “objective” and “purpose” are also written in plural throughout both the Convention on Biological Diversity and the draft convention outlined in this document.

While Article 1 of the UN Convention Against Corruption is worded as a statement of purpose rather than an objective, it is somewhat similar to the Convention on Biological Diversity in that it operates with three core purposes.<sup>32</sup> There are numerous alternative approaches that could also be considered. For example, the objective statement could be focused on one central “ultimate” objective, such as is the case, for example, in the UN Framework Convention on Climate Change.<sup>33</sup> The objective statement could also include text on how the objective will be pursued, as is the case in the third of the Rio Conventions, namely the Convention to Combat Desertification.<sup>34</sup> As discussed in the commentary to the draft convention on the right to development, there is also the option of writing Article 1 and a combination of an objective and purpose.<sup>35</sup>

The draft convention outlined in this document is intended to be a framework that encapsulates the central tax-related international questions that require intergovernmental cooperation, commitments and action. For this purpose, a three-layered objective statement has the advantage of keeping the different subitems distinct, but at the same time bringing them together under the umbrella of one overall UN Convention on Tax.

## **Article 2**

### **PRINCIPLES**

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided by, inter alia, the following principles:

1. Every State has the sovereign right to decide the policies and practices of its domestic tax system, and the responsibility to ensure that such policies and practices do not cause damage to, or undermine the effectiveness of, the tax base or system of any other State.
2. Every State has the obligation to exchange, as well as the right to receive from other States, information concerning individuals as well as companies and similar legal structures operating within its jurisdiction, which is or may be of importance to ensuring the fairness, equitableness, progressivity, transparency and effectiveness of its domestic tax system. Every State also has the obligation to ensure the protection of human rights, including the right to privacy.
3. While respecting the right to privacy, every State has the obligation to provide citizens with full access to information of importance to assess the fairness, equitableness, progressivity, transparency and effectiveness of their domestic tax system, including information about the level of tax-related illicit financial flows as well as tax incentives and effective tax rates.
4. States have a collective responsibility to ensure that multinational corporations are taxed as coherent entities, with taxes being paid in the States where economic activity takes place and value is created.
5. The participation of civil society is essential in achieving the objective of the Convention.

### ***Comments on Article 2: Principles***

Article 2 spells out five basic principles of the Convention.

The first two principles specify that States have the right to decide on issues relating to their domestic tax systems, and the obligation to ensure that they do not undermine the same right of other States. This includes an obligation to exchange information that is or may be of importance for the ability of other States to ensure that their tax systems are fair, equitable, progressive, transparent and effective.

The third principle concerns the obligation to provide transparency to the public.

The fourth principle concerns the obligation of States to cooperate on the issue of taxation of multinational corporations and should be seen in the context of Article 12 of the Convention, which concerns the development of a new international corporate tax system.

The fifth principle stresses the importance of civil society participation. This principle is similar to the principle that can be found in Article 4.7 of the World Health Organization (WHO) Framework Convention on Tobacco Control.<sup>36</sup>

## **Article 3**

### **USE OF TERMS**

For the purposes of this Convention:

*“Beneficial owner”* means, for corporate entities, any natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means; and for trusts and similar legal instruments, it means the settlor(s), the trustee(s), the protector(s), if any, the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates, as well as any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

*“Illicit financial flows”* are financial flows that are illicit in origin, transfer or use, that reflect an exchange of value and that cross country borders. This includes tax avoidance and evasion.

*“Information sharing”* includes confidential exchanges of information between governments, as well as the sharing of information with the public.

### ***Comments on Article 3: Use of terms***

The definition of “beneficial owner” builds on some of the elements of the definitions contained in the 5th EU Anti-Money Laundering Directive, where the term is defined in relation to both companies and trusts.<sup>37</sup>

The definition of “illicit financial flows” draws on the statistical definition that has been developed by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Office on Drugs and Crime (UNODC).<sup>38</sup>

The concept of “information sharing” is defined as being broader than the concept of “information exchange,” which is common in international tax agreements.<sup>39</sup> The key difference is that while “information exchange” refers to information that is shared between tax authorities but kept confidential to the public, the concept of “information sharing” would include both the practice of exchanging confidential tax information between authorities and the practice of providing public access to information.

## **Article 4**

### **GENERAL OBLIGATIONS**

1. Each Party shall, in accordance with its capacities, ensure that its national tax system, policies and practices:
  - (a) Are fair, equitable, progressive, transparent and effective;
  - (b) Do not cause damage to, or undermine the effectiveness of, the tax base or system of any other Party; and
  - (c) Do not contribute to tax-related illicit financial flows, including international tax abuse, tax avoidance and evasion.
2. Each Party shall ensure that its tax system, policies and practices are in line with human rights, including the right to privacy and related data protection.
3. While fully respecting the obligations outlined in paragraph 2 of this Article, each Party shall, in accordance with its capacities, ensure a high level of public transparency, participation and accountability in all processes relating to its tax system. This includes:
  - (a) Tax rates, including effective tax rates;
  - (b) Tax policies and practices, as well as related tax expenditures;
  - (c) Tax treaties, including at all stages of tax treaty negotiations;
  - (d) International spillover effects of tax policies and practices; and
  - (e) Advance tax agreements.

4. In setting and implementing their tax policies and practices, each Party shall act to protect its tax system from vested interests of individual and commercial actors, in accordance with national law.
5. In order to promote the implementation of this Convention, each Party shall review any tax treaties or tax-related treaties that it has entered into. In cases where a treaty is found to be inconsistent with the objectives or principles of the Convention, or with the obligations and commitments of the Party under the Convention, the Party shall ensure that such a treaty is renegotiated or terminated.
6. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of this Convention.
7. Each Party shall designate or establish one or more competent authorities and one focal point for the implementation of this Convention.

#### ***Comments on Article 4: General obligations***

Article 4 provides general overall obligations that cut across the more specific obligations outlined in the subsequent Articles. Not all conventions have such an article, but a similar structure can be found, for example, in the WHO Framework Convention on Tobacco Control.<sup>40</sup> It can also be found in the draft convention on the right to development, where the proposed Article 8 outlines “General obligations of States Parties,” with the subsequent Articles outlining more specific obligations.<sup>41</sup>

Article 4.4 stresses that Parties have the obligation to protect their tax systems from vested interests of individual and commercial actors. A similar paragraph can be found in Article 5 of the WHO Framework Convention on Tobacco Control.<sup>42</sup>

Article 4.5 relates to tax-related treaties that conflict with the Convention and obliges each Party to review its treaty network and resolve such issues, including by renegotiating or terminating treaties. This obligation should also be seen in the context that – due to the limitations they can impose on taxing rights, as well as risks related to tax abuse – tax treaties have repeatedly been raised as a point of concern, especially for developing countries. For example, the IMF has highlighted that tax treaties “continue to impose revenue risks for developing countries,” and that the evidence regarding the positive effects of such treaties is ambiguous.<sup>43</sup>

The option of terminating treaties is also included in the OECD’s Base Erosion and Profit Shifting (BEPS) Action 6 on Treaty Abuse, but here a much more careful approach is taken to this issue, as the final report on Action 6 flags the “question of whether a State should seek to modify or replace an existing treaty or even, as a last resort, terminate a treaty.”<sup>44</sup> One potential reason for this cautious approach is the resistance that some countries, and not least the United States, have had to the idea of treaty termination. For example, Professor Omri Marian has quoted the US Department of Treasury for referring to it as a “nuclear weapon.”<sup>45</sup> However, it is a fact that fundamental reforms of

the international corporate tax system will be very difficult to carry out unless countries are ready to change or remove the more than 3,000 double tax agreements that reflect the tax standards and system of the past.

As can be seen in the OECD's multilateral instrument on BEPS, the OECD has chosen a "half way" approach, in the sense that it has opted for using a multilateral approach to introduce mass changes to bilateral treaties, while leaving it up to countries and jurisdictions to decide whether some or all of the obligations in the multilateral instrument should be introduced to all or only some of their treaties (see also the comments on Article 28 on Reservations below).<sup>46</sup> The result is a very complex matrix of multilateral and bilateral commitments and obligations, as can be seen, for example, in the OECD's "matching Database," which outlines the many different choices that countries and jurisdictions have made.<sup>47</sup> A central aim of the UN Tax Convention is to replace this complex system with a truly multilateral system, whereby the Parties to the Convention develop joint rules, mechanisms and practices under the Convention instead of through bilateral treaties. This will require changing or removing tax treaties that conflict with the Convention, which is the logic behind Article 4.5.

Article 4.7 outlines an obligation for Parties to identify one or more competent authorities as well as a focal point for the implementation of the Convention. The concept of competent authority can also be found in bilateral tax treaties,<sup>48</sup> as well as in the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.<sup>49</sup> Since the draft Convention covers a range of issues, it can be relevant for Parties to involve more than one competent authority in the implementation. In that case, the focal point would have the function of coordinating and being the overall contact point for the country in relation to the Convention. The approach of having both competent authorities and a focal point is similar to the approach found in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.<sup>50</sup>

## PART II: TRANSPARENCY

### *Overall comments on Part II: Transparency*

The section on transparency includes Articles relating to confidential exchange of information between States (Article 5) as well as information that should be available to the public (Articles 6, 7 and 8). With a view to facilitating implementation, Article 9 entails that the commitments and obligations under Articles 5-8 would be compiled into one overall UNCT Transparency Standard.

The articles on transparency, including public transparency, will play a very central role in the functioning of the Convention. This includes providing information that will be important for allowing both governments and the public to evaluate the functioning of the international tax system on an ongoing basis. This information will be important for other processes under the Convention, including, for example, the intergovernmental tax cooperation process foreseen under Article 10, as well as negotiation of a new international system for taxation of multinational corporations foreseen under Article 11. With that in mind, the section on transparency is designed in a way that would allow some transparency requirements to take effect relatively early after the Convention has entered into force, with the focus being on implementing such transparency measures in developed countries within a specified timeline. At the same time, the section is designed to ensure that the transparency requirements will be reviewed and further developed before more advanced systems – which would also include transparency measures to be implemented in developing countries – are introduced. These reviews and further decision-making would take place under the Conference of the Parties, which is established under Article 14.

### Article 5

#### **AUTOMATIC EXCHANGE OF INFORMATION**

1. A mechanism for automatic information exchange is hereby established with the purpose of providing exchange of information between Parties, while ensuring full protection of human rights, including the right to privacy. Through this mechanism, all Parties shall have equal access to automatic information exchange with all other Parties in a non-discriminatory way.
2. Each Party to this Convention shall monitor and collect all relevant information, including banking information, concerning foreign citizens, companies, trusts or similar legal structures, which is or may be of importance to ensuring the fairness, equitableness, progressivity, transparency and effectiveness of the domestic tax system of any other Party. Furthermore, each Party shall ensure the effective, efficient and timely exchange of such information with the Party concerned through the mechanism for automatic information exchange. In particular, information shall be exchanged that could be helpful to the Party concerned in preventing avoidance or evasion of taxes of every kind, insofar as such taxes are not contrary to the Convention.

3. All Parties that are not developing countries shall implement and comply with Article 5.3 no later than three years after the entry into force of the Convention. Developing country Parties shall do so as appropriate and in accordance with their national capacity, within a timeline to be determined by the Conference of the Parties. During a transition period to be determined by the Conference of the Parties, developing country Parties with capacity constraints, including least developed countries, shall be allowed to receive information on a non-reciprocal basis.
4. Developed country Parties shall assist developing country Parties to obtain the capacity and technology, including digital tools, to comply with the requirements in this Article, including as relates to privacy and related data protection. Furthermore, developed country Parties shall support developing country Parties with data management and analysis, as well as effective and responsible use of information received.
5. The functions and modalities of the mechanism for automatic information exchange shall be further elaborated by the Conference of the Parties, which shall also consider and agree detailed rules and procedures for the exchange, receipt, protection and use of the information related to this mechanism.

***Comments on Article 5: Automatic exchange of information***

Article 5 sets up a mechanism to ensure that all the Parties to the Convention will be able to automatically access the information they need to collect taxes. This system obliges all signatories to the Convention to provide automatic information exchange to all other Parties, as long as requirements relating to protection of human rights, including the right to privacy, are fulfilled. This differs from the existing OECD-led system of automatic information exchange, which ultimately relies on bilateral agreements between countries to operationalize automatic information exchange between them, and thus, since countries are still able to pick and choose which other countries they sign bilateral agreements with, it does not guarantee equal conditions for all countries. In practice, the existing system can cause difficulties for less powerful countries, which do not hold much leverage when it comes to obtaining bilateral agreements with other countries. Furthermore, the system is open to political pressures, and more powerful countries might introduce inappropriate conditions for signing agreements with less powerful countries (or simply refrain from signing such agreements).

Article 5 also provides a solution to the problem that some countries, and in particular least developed countries, currently lack the capacity to collect and provide information to other countries. The Article aims to accommodate this by introducing a transition period in which such countries can receive information on a non-reciprocal basis. Furthermore, the Article specifies that developed countries shall support developing countries to obtain the capacity and tools necessary to comply with the Article.

Article 5.2 puts special emphasis on information related to preventing tax avoidance and evasion, which is drawing on language from the UN Model Tax Convention.<sup>51</sup>

## Article 6

### SHARING OF BENEFICIAL OWNERSHIP INFORMATION

1. Each Party shall monitor and collect the following information about the beneficial owner(s) of all companies, trusts and similar legal structures registered, administered, controlled or operating within their jurisdiction:
  - (a) Name;
  - (b) Month and year of birth;
  - (c) Country of residence and nationality; and
  - (d) Nature and extent of beneficial interests held.
2. Each Party that is not a developing country shall update and report the information mentioned in paragraph 1 of this Article on an annual basis to the Secretariat established under Article 15 of this Convention, beginning two years after the entry into force of the Convention. Developing countries shall report such information as appropriate and in accordance with their national capacity, within a timeline to be determined by the Conference of the Parties.
3. The Secretariat shall ensure that, within three months of receipt, the information mentioned in paragraph 1 of this Article is published in the UN Public Registry for Corporate Transparency established under Article 18.
4. The Conference of the Parties shall conduct a review of this Article five years after the entry into force of the Convention and take further action, as appropriate.

#### ***Comments on Article 6: Sharing of beneficial ownership information***

International tax scandals such as Offshore Leaks, the Paradise Papers and the Pandora Papers have exposed the central role that opaque ownership structures, including anonymously owned companies and trusts, play in relation to international tax dodging and tax-related illicit financial flows.<sup>52</sup> With that in mind, Article 6 is designed to ensure that all Parties to the Convention, as well as the public, can benefit from an international system of transparency around beneficial owners.

Public registries of beneficial owners of companies have already been introduced in the European Union,<sup>53</sup> but a global system for public transparency does not yet exist. Since such transparency will provide information that is central for the effectiveness of the Convention, including by exposing international tax dodging and injustice, Article 6 is designed to ensure that sharing of beneficial ownership information begins relatively soon after the Convention has entered into force. However, at the same time, Article 6 recognizes that it is central to ensure that the interests of all countries, including developing countries, are reflected in an international system for beneficial ownership transparency. Therefore, Article 6 foresees a full review of the system five years after the entry into force of the Convention. Lastly, the Article includes a differentiation between developed countries, which are required to introduce beneficial ownership transparency within two years after the entry into force of the Convention, and developing countries, which are not given a specific deadline.

## Article 7

### **PUBLIC COUNTRY BY COUNTRY REPORTING**

1. Each Party shall take appropriate legislative measures to ensure that all large multinational corporations operating within their jurisdictions submit country by country reports on an annual basis to the Secretariat of the Convention, containing at least the following information:
  - (a) Name, description and tax residence of all entities;
  - (b) Revenues of all entities of the corporation on a country by country basis, distinguishing between transactions with associated entities and non-associated entities;
  - (c) Profit or loss before income tax on a country by country basis;
  - (d) Income tax paid on a cash basis, for each jurisdiction in which the corporation is present or operates, distinguishing between corporate income tax paid and withholding tax paid;
  - (e) Income tax accrued for the year of reporting, for each jurisdiction in which the corporation is present or operates;
  - (f) Stated capital on a country by country basis;
  - (g) Accumulated earnings on a country by country basis;
  - (h) Number of employees on a full-time equivalent basis for each jurisdiction in which the corporation is present or operates;
  - (i) Tangible assets other than cash and cash equivalents on a country by country basis;
  - (j) Public subsidies received; and
  - (k) Explanations for any difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.
2. For the purpose of this Article, the term “large multinational corporation” shall be defined as a corporate entity that operates in more than one country and meets or exceeds a minimum of two of the following three criteria: a) a balance sheet total of USD \$ 23,000,000; b) an annual net turnover of USD \$ 46,000,000; c) an average number of employees during the financial year of 250.
3. Each Party to this Convention that is not a developing country shall ensure that the legislation mentioned in paragraph 1 of this Article is in place no later than two years after the entry into force of the Convention. Developing country Parties shall ensure that the legislation is in place within a timeline to be determined by the Conference of the Parties, while taking into account their different capacities and national circumstances.
4. The Secretariat shall ensure that, within three months of receipt, all country by country reports are published in the UN Public Registry for Corporate Transparency established under Article 18.
5. The Conference of the Parties shall review the effectiveness and level of implementation of this Article every three years unless it decides otherwise. In the context of such reviews, the Conference of the Parties shall assess the need to expand the reporting beyond the elements listed in paragraph 1 of this Article, as well as the need to lower the thresholds outlined in

paragraph 2. Based on these reviews, the Conference of the Parties shall take further action, as appropriate.

***Comments on Article 7: Public country by country reporting***

Country by country reports provide an overview of where multinational corporations do business and how much tax they pay in each country where they operate. Therefore, they are important for detecting large-scale corporate tax avoidance and assessing the fairness and effectiveness of the international corporate tax system.<sup>54</sup> Today, country by country reporting is a part of the OECD's BEPS rules, but the information is not public. Instead, the information is usually collected by the country where a multinational corporation is headquartered, and then exchanged secretly between tax administrations. However, many countries, and in particular developing countries, have very limited, if any, access to such reports.<sup>55</sup> Meanwhile, public country by country reporting has been introduced for banks in the EU.<sup>56</sup> Furthermore, a voluntary standard for public country by country reporting has been developed by the Global Reporting Initiative (GRI).<sup>57</sup>

Similar to Article 6, Article 7 is designed to do two things. Firstly, it aims to ensure that country by country reports from multinational corporations start becoming available to all countries, as well as the public, relatively quickly after the Convention enters into force. This would, for example, mean that the development of a new international corporate tax system, as foreseen under Article 11, could be informed by data from such country by country reports. At the same time, Article 7 also includes a review, which would ensure that all countries, including developing countries, can participate in the future development of the reporting requirements.

Until the first review (foreseen to take place after three years), the reporting requirements would be those outlined in paragraph 1 of Article 7, which draws heavily on a voluntary standard developed by GRI.<sup>58</sup> Paragraph 2 defines a minimum threshold for which multinational corporations should be covered by the reporting requirements, which follows the EU definition of a large undertaking.<sup>59</sup>

Similar to Article 6, Article 7 includes a differentiation between developed countries, which are required to introduce the reporting requirements within two years after the entry into force of the Convention, and developing countries, which are not given a specific deadline.

## Article 8

### **TRANSPARENCY AROUND TAX POLICIES AND PRACTICES**

1. Each Party shall report annually to the Secretariat of the Convention on the following:
  - (a) An overview of its statutory tax rates;
  - (b) A calculation of its effective tax rates;
  - (c) An overview tax exemptions and incentives, along with a calculation of the expected costs and benefits of such exemptions or incentives, including international spill-over effects;
  - (d) An overview of international tax treaties, including treaties under negotiation; and
  - (e) Number and type of advance tax agreements.
2. Each Party that is not a developing country shall submit the first reports following from paragraph 1 of this Article no later than two years after the entry into force of this Convention. Developing country Parties shall report such information within a timeline to be determined by the Conference of the Parties, while taking into account their different capacities and national circumstances.
3. The Conference of the Parties shall develop a template and specific methodologies for the data collection, calculations and reporting following on from paragraphs 1 and 2 of this Article at its first meeting.
4. The Secretariat shall ensure that, within three months of receipt, all reports submitted by Parties are published in the UN Public Registry for Tax and Fiscal Policies established under Article 19.
5. The Conference of the Parties shall review the effectiveness and level of implementation of this Article every three years unless it decides otherwise. In the context of such reviews, the Conference of the Parties shall assess the need to expand the reporting beyond the elements listed in paragraph 1. Based on these reviews, the Conference of the Parties shall take further action, as appropriate.

#### ***Comments on Article 8: Transparency around tax policies and practices***

Publicly available information concerning tax policies and practices, including effective tax rates and incentives, is important to allow the public to assess and debate the fairness and efficiency of the tax system. Therefore, Article 8 introduces a system to ensure government reporting and publication of this information on the basis of a methodology that is to be developed by the Conference of the Parties.

Similar to Article 6 and 7, Article 8 includes a differentiation between developed countries, which are required to comply with the reporting requirements within two years after the entry into force of the Convention, and developing countries, which are not given a specific deadline.

## Article 9

### **TRANSPARENCY STANDARD**

The obligations and commitments of Parties following from Articles 5, 6, 7 and 8 above shall be compiled into a Transparency Standard. The Standard shall be compiled, published and kept up to date by the Secretariat to this Convention.

#### ***Comments on Article 9: Transparency standard***

The aim of Article 9 is to facilitate implementation by ensuring that the commitments and obligations under Articles 5-8 will be compiled into one overall UNCT Transparency Standard. Following Article 20 of the Convention, this standard is linked to an obligation of Parties to report on their implementation of the Convention.

## PART III: TAXATION AND TAX-RELATED ILLICIT FINANCIAL FLOWS

### Article 10

#### INTERGOVERNMENTAL TAX COOPERATION

1. With the overall view of promoting the objectives of this Convention, the Conference of the Parties shall act as a forum for intergovernmental tax cooperation. In doing so, it shall be open to participation by all Parties and observers. Furthermore, it shall take into account the capacities and special circumstances of developing countries, as well as international obligations and commitments, and in particular the commitment to reducing inequalities among countries.
2. The Conference of the Parties shall develop rules, guidelines and procedures, as appropriate, to ensure coordination and cooperation, including as regards:
  - (a) Methods for the elimination of tax-related illicit financial flows, including tax abuse, tax avoidance and evasion by both corporate and individual actors;
  - (b) Taxation of income;
  - (c) Taxation of capital;
  - (d) Methods to eliminate double taxation while avoiding double non-taxation or reduced taxation through tax abuse, including tax avoidance and evasion;
  - (e) Non-discrimination;
  - (f) Assistance in the collection of taxes; and
  - (g) Entitlement to benefits.
3. The Conference of the Parties shall develop specific rules, guidelines and procedures, as appropriate, to address:
  - (a) The need to ensure effective taxation of extractive industries; and
  - (b) The need to ensure effective taxation of capital gains in the country from which the economic gain is derived, including by combating tax avoidance through offshore indirect transfers.
4. The Conference of the Parties may consider and develop systems for internationally applied taxes including, for example, in the form of financial transaction taxes or taxes on international transport. In this context, the Conference of the Parties may also consider and develop systems for the allocation of revenues to promote the fulfilment of international goals and objectives, including those relating to human rights, environmental protection, equality and the achievement of the Sustainable Development Goals, as well as those needed to promote the implementation of this Convention.
5. In cases where the tax system, policies or practices of a country or jurisdiction that is not a Party to this Convention undermine the fairness, equitableness, progressivity, transparency or effectiveness of the domestic tax system of any Party or group of Parties, the Conference of the Parties may consider and develop sanction mechanisms towards the country or jurisdiction in question.

6. Any proposals for rules or procedures that will have direct and significant consequences for the tax systems, including tax rates, of any Party to this Convention shall be developed in the form of a proposed Protocol in line with Article 23 of the Convention.

### ***Comments on Article 10: Intergovernmental Tax Cooperation***

Article 10 determines that a central role of the COP (established under Article 14) is to be a forum for intergovernmental tax cooperation, including coordination, between countries. In addition to the broader mandate to lead on tax cooperation, the COP is assigned a number of specific tax issues to address, outlined in paragraphs 3-6 of the Article.

Article 10.1 puts the work on intergovernmental tax cooperation into the broader context, with a special emphasis on the international objective of reducing inequalities between countries, and notes the special circumstances of developing countries.

Through Article 10.2, the COP is mandated to address tax-related illicit financial flows, as well as a number of issues that are usually covered in bilateral tax treaties (taxation of income; taxation of capital; methods for the elimination of double taxation; non-discrimination; assistance and entitlement to benefits). The underlying idea is that, instead of regulating these international elements through the network of thousands of individual bilateral treaties, the Parties to the Convention would lead to the development of standards that would be applied by all the Parties, and thus significantly increase the consistency and coherence of the international system.

Furthermore, negotiating these elements under a UN Convention would give countries the opportunity to work together, learn from each other, discuss best practices and form progressive alliances. This could make a big difference, both in the quality of the outcome, but also in ensuring the interests of the smallest and poorest countries, which can find it challenging to uphold their interests in bilateral negotiations with bigger and more powerful countries and can benefit from working in coalitions with like-minded countries in the UN negotiations.

It is also important to note that, as specified in paragraph 1 of the Article, the process would be open to the participation of observers. From the perspective of civil society – but also parliamentarians, academics and the broader public, for example – this would mean a very significant change. These actors are often excluded from bilateral tax treaty negotiations, which are commonly closed and confidential.

Article 10.3 addresses specific areas of concern that are particularly important for developing countries, namely taxation of extractive industries and capital gains tax. These issues have, for example, been flagged as areas of concern by the FACTI Panel's report, which also recommended that a UN Tax Convention "should provide for effective capital gains taxation" (recommendation 4A).<sup>60</sup>

Article 10.4 addresses taxes that could be applied internationally. Since this is an area where the discussion is still at a relatively early stage, the Convention does not specify whether or not the Parties would want to agree on any such taxes, but simply provides the option for them to do so.

In the event that not all countries and jurisdictions decide to join the Convention, Article 10.5 provides the option for Parties to address instances where the tax system, policies or practices of a non-Party is undermining the tax system of one or more of the Parties of the Convention, including potential sanction mechanisms. In the area of tax, the discussion about how to sanction “non-cooperative jurisdictions” is by no means new. It has, for example, been discussed by the EU in relation to what is commonly known as the “EU tax haven blacklist.”<sup>61</sup> However, one important difference is that the basis for any action under Article 10.5 would be a Convention developed under the United Nations, where all countries can participate on an equal footing, as opposed to criteria developed through processes where some countries have more powers than others.

To the extent that rules or procedures developed under Article 10 would entail new international commitments by Parties, which would have direct and significant effects on their tax systems, Article 10.6 makes it clear that such changes would need to be introduced in the form of a new legal agreement that would be subject to ratification in order to enter into force – in other words, a protocol to the Convention.

While the responsibilities outlined under Article 10 are formally assigned to the COP, it should be noted that following Article 14.6, the COP can decide to set up subsidiary bodies. A subsidiary body to implement Article 10 would bring the advantage that the body could lead intergovernmental negotiations in-between the sessions of the COP, which would allow the Parties more negotiating time.

## **Article 11**

### **TAXATION OF MULTINATIONAL CORPORATIONS**

1. The Conference of the Parties shall initiate a transparent and party-driven negotiation process to develop a new international system to ensure fair, equitable, progressive, transparent and effective taxation of multinational corporations, in accordance with the objectives and principles of this Convention. This process shall be open to participation by all Parties and observers.
2. The agreed outcome of the process mentioned in paragraph 1 of this Article shall:
  - (a) Provide an international system to prevent illicit financial flows stemming from corporate tax abuse, including corporate tax avoidance and evasion;
  - (b) Ensure that multinational corporations are taxed as coherent entities, with taxes being paid in the States where economic activity takes place and value is created;
  - (c) Serve to reduce inequality within and among States, and prevent harmful tax practices and tax competition;
  - (d) Provide an international system for taxing multinational corporations on the basis of their global consolidated profits, with taxing rights being allocated between States on the basis of an agreed formula; and
  - (e) Include a mechanism to implement an effective global minimum corporate tax rate at a level high enough to prevent an international race to the bottom on corporate tax rates.

3. The agreed outcome of the process mentioned in paragraph 1 of this Article shall be in the form of a Protocol to this Convention.

***Comments on Article 11: Taxation of multinational corporations***

One key aim of the Convention would be to replace the transfer pricing system and develop a new international corporate tax system that would ensure that multinational corporations are taxed as coherent entities and that a minimum effective corporate tax rate is introduced. Article 11 mandates an intergovernmental negotiation under the Convention to develop such a system. It is not unheard of that framework conventions include an outline of a future protocol on a specific issue. An example of this is Article 19.3 of the Convention on Biological Diversity, which mandates such a negotiation and eventually resulted in the Cartagena Protocol on Biosafety.<sup>62</sup> Article 11 of the proposed UN Convention on Tax is, however, slightly stronger than this example, given that it not only specifies that the Parties should “consider” a protocol, but states that a protocol should be developed.

The concept of taxing multinational corporations as coherent entities, also known as unitary taxation, has long been supported by, for example, civil society organisations, trade unions and academics. It has also been proposed by several UN High-level panels, including the so-called Zedillo High-level Panel on Financing for Development, which delivered its recommendations to governments over 20 years ago.<sup>63</sup> The more advanced idea of combining unitary taxation with a minimum corporate tax rate has also been supported by a broad range of actors. In addition to civil society organizations and trade unions it has, for example, been proposed by the FACTI High-level Panel<sup>64</sup> and the Independent Commission for the Reform of Corporate Taxation (ICRICT), with the latter advocating specifically for such a rate to be set at 25 per cent, corresponding to the current corporate average tax rate in G7 countries.<sup>65</sup>

**Article 12**  
**TAX STANDARD**

The obligations and commitments of Parties following from Articles 10 and 11 above shall be compiled into a Tax Standard. The Standard shall be compiled, published and kept up to date by the Secretariat to this Convention.

***Comments on Article 12: Tax standard***

With the view of facilitating implementation, and similar to the Transparency Standard outlined under Article 9, Article 12 entails that the commitments following from Articles 10 and 11 would be compiled into one overall UNCT Tax Standard. Following Article 20 of the Convention, this standard is linked to an obligation of Parties to report on their implementation of the Convention.

**Article 13**  
**RELATIONSHIP BETWEEN TAXATION AND INTERNATIONAL GOALS,  
OBLIGATIONS AND COMMITMENTS**

1. Each Party to this Convention commits to pursuing policy coherence between its tax system, policies and practices and its other international obligations and commitments, including those relating to human rights, environmental protection, equality and the achievement of the Sustainable Development Goals. In this context, coherence includes the impact that a Party's tax system has domestically as well as the impact that a Party's tax system might have on the ability of other Parties to uphold their international obligations and commitments, including any potential negative spillover effects. It also includes a commitment to ensuring that, at the overall level, there is coherence between the spending of tax revenue and international obligations and commitments of a Party.
2. In line with Article 20 of this Convention, each Party shall report on its performance in relation to its commitments under this Article.
3. With a specific view to ensuring that tax systems, policies and practices promote implementation of international goals, obligations and commitments relating to gender equality and women's rights, the rights of persons with disabilities, as well as environmental protection, the reports produced pursuant to Article 20 of this Convention shall include specific sections on these issues.
4. With a view to ensuring the implementation of international commitments and obligations by developed countries to provide financial resources to assist developing countries with respect to international goals and agreements, the reports produced by developed country Parties pursuant to Article 20 of this Convention shall include a specific section on this issue.
5. In addition to the periodic review of individual Parties following from Article 21 of this Convention, the Conference of the Parties shall perform an overall review the implementation of

this Article as a standing agenda item during each meeting. This overall review shall be open to participation by all Parties and observers. For the purpose of the overall review, the Secretariat of this Convention shall prepare a Summary Report on the Relationship Between Taxation and International Goals, Obligations and Commitments. The report shall be informed by, inter alia, the information submitted to the Secretariat pursuant to Articles 6, 7, 8 and 20 of the Convention, as well as relevant information submitted to, or developed by, other bodies under the UN, including those related to the implementation of the Sustainable Development Goals, the Rio Conventions, the UN human rights bodies and the Commission on the Status of Women. Observers shall also be invited to submit input to the report. Following each review, the Conference of the Parties shall adopt recommendations to ensure and promote national and international policy coherence between tax systems and international goals, obligations and commitments, including those relating to human rights, environmental protection, equality and the achievement of the Sustainable Development Goals.

***Comments on Article 13: Relationship between taxation and international goals, obligations and commitments***

A key part of the objective of the Convention is to contribute to the achievement of international goals, obligations and commitments, as specified in Article 1 on Objectives. In line with this, Article 13 introduces a commitment to policy coherence, which is linked to the reporting obligations that Parties have under Article 20 of the Convention. Through Article 13.3, special emphasis is placed on the issues of gender equality, women's rights, the rights of persons with disabilities,<sup>66</sup> and environmental protection, and it is specified that Parties shall include specific sections on these issues when reporting.

The Convention also aims to contribute to the fulfillment of international obligations and commitments by developed countries to provide financial resources to developing countries, such as the obligations to provide climate finance under the UN Framework Convention on Climate Change and the Paris Agreement.<sup>67</sup> Therefore, Article 13.4 provides a link to such international obligations and commitments and requires the reporting of developed countries under Article 20 to include a specific section on this.

Through Article 13.5, the reporting is followed by an intergovernmental annual review of the implementation of Article 13, which will be open to all Parties and observers.

## PART IV: INSTITUTIONAL ARRANGEMENTS

### **Overall comments on Part IV: Institutional arrangements**

Part IV of the Convention establishes the key institutions under the Convention including the Conference of the Parties (COP). In addition to the institutions specified below, Article 14.6 also specifies that the Parties to the Convention shall establish any subsidiary bodies that might be necessary to implement, and achieve the objectives of, the Convention.

### **Article 14**

#### **CONFERENCE OF THE PARTIES**

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt. It shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention.
3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure, as well as those of the subsidiary bodies established by this Convention.
4. The first meeting of the Conference of the Parties shall be convened by the President of the United Nations Economic and Social Council no later than one year after the entry into force of the Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held every year, unless otherwise decided by the Conference of the Parties.
5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.
6. In its reviews of the implementation of the Convention and any related legal instruments, the Conference of the Parties shall be informed by relevant research and publications, including the reports produced by the Secretariat following Article 15.1(h).
7. The Conference of the Parties shall establish such subsidiary bodies as are necessary to implement, and achieve the objectives of, the Convention.
8. The UN and its specialized agencies and economic commissions, as well as parliamentarians and any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. The Conference of the Parties shall operate in a transparent and participatory manner, and any body or agency – whether national or international, governmental or non-governmental – that is qualified within the matters covered by the Convention, and that has informed the Secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third

of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

#### ***Comments on Article 14: Conference of the Parties***

Article 14 establishes a Conference of the Parties (COP) as the supreme body of the Convention. This is a standard approach that can be found in numerous UN agreements. The COP brings together the Parties to the Convention and will be the place to review implementation and take further decisions. Thus, it plays a very central governance role and is vital for ensuring that the processes and decision-making under the Convention have the ownership of, and is led by, the Parties to the convention.

In addition to UN agreements, the concept of a COP is also, for example, included in the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, but with a different approach in the sense that, while the Parties "may convene a Conference of the Parties", there is no obligation to do so.<sup>68</sup> Under the proposed UN Convention on Tax, the COP is set to take place on an annual basis unless the Parties decide otherwise. This is similar, for example, to the case for the COP under the UN Framework Convention on Climate Change.<sup>69</sup>

In the UN system, the COPs of different conventions are also usually central for ensuring transparency, government accountability and effective participation of observers. Article 14.8 of the proposed UN Convention on Tax specifies that the COP shall operate in a transparent and participatory manner. Furthermore, it outlines a procedure for admission of both governmental and non-governmental observers, which is largely similar to what can be found in a number of other UN Conventions.<sup>70</sup> In comparison, the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting does not contain any procedure regarding admission of observers to the COP<sup>71</sup> and tax-related intergovernmental meetings at the OECD are commonly closed to observers such as civil society.

Article 14.8 of the proposed UN Convention on Tax also specifies that parliamentarians should be allowed to participate as observers in the meetings of the COP. While this is common practice under many UN Conventions, the participation of parliamentarians is not commonly mentioned explicitly in the text of the Convention. Within the UN system there does, however, seem to be broad recognition of the importance of their participation, and the issue is, for example, included in the UN Addis Ababa Action Agenda on Financing for Development.<sup>72</sup> The central role of parliamentarians is also highlighted in the UN 2030 Agenda for Sustainable Development.<sup>73</sup>

**Article 15**  
**SECRETARIAT**

1. A Secretariat is hereby established. Its functions shall be:
  - (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
  - (b) To compile and transmit reports submitted to it;
  - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
  - (d) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
  - (e) To ensure the necessary coordination with the secretariats of other relevant international bodies;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
  - (g) To operate and maintain:
    - (i) The UN Public Registry for Corporate Tax Transparency established under Article 18 of this Convention; and
    - (ii) The UN Public Registry for Tax and Fiscal Policies established under Article 19 of this Convention.
  - (h) To produce and publish:
    - (i) An annual report regarding the links between taxation and inequalities between countries, including the issues of tax-related illicit financial flows as well as the division of taxing rights between countries. This report shall be informed by, inter alia, the information submitted to the Secretariat pursuant to Articles 6, 7, 8 and 20; and
    - (ii) An annual Summary Report on the Relationship Between Taxation and International Goals, Obligations and Commitments, in line with Article 13.5 of the Convention.
  - (i) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.
2. The Conference of the Parties, at its first session, shall designate a permanent Secretariat and make arrangements for its functioning.

### ***Comments on Article 15: Secretariat***

Article 15 establishes a Secretariat of the Convention and contains a number of basic functions and mandates that can also be found in other UN Conventions. Specifically, Article 15 draws heavily on Article 8 of the UN Framework Convention on Climate Change.

Not all conventions include the establishment of a new Secretariat. For example, unlike the proposed UN Tax Convention, OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting does not include a Secretariat specifically for the Convention.<sup>74</sup> Instead, the OECD Secretariat functions as Secretariat for the Convention. However, this has given rise to concerns from civil society organizations as to whether the Secretariat will be neutral, or whether it will in reality be more accountable to the signatories that are also OECD Member States, as less to those that are not.<sup>75</sup> In light of this, one important advantage of setting up a new Secretariat under the UN Convention on Tax is that such a Secretariat would be equally accountable to all the countries that are Parties, and would not be accountable to decisions made by other bodies than those of the Convention.

In addition to the standard functions, Article 15 also introduces a few elements that are specific to the UN Convention on Tax. Firstly, the article specifies that the Secretariat of the Convention should operate the two public registries that will be established under Article 17 and 18. Secondly, it requests that the Secretariat produces two annual reports – one on taxation and inequalities between countries, and one on the relation between taxation and international goals, obligations and commitments (i.e. the issues addressed in Article 14 of the Convention). In particular as regards the function of producing an annual report on taxation and inequalities between countries, the Secretariat would take a role that is somewhat similar to the idea of establishing an international 'Centre for Monitoring Taxing Rights'. This proposal was first put forward by Alex Cobham in his book 'The Uncounted'<sup>76</sup> and later echoed in the recommendations of the FACTI Panel (recommendation 11A).<sup>77</sup>

## **Article 16**

### **RELATIONSHIP WITH THE UN EXPERT GROUP ON INTERNATIONAL COOPERATION IN TAX MATTERS**

The UN Expert Group on International Cooperation in Tax Matters shall function as a subsidiary body of this Convention to provide the Conference of the Parties and, as appropriate, any other bodies established under the Convention, with timely technical advice relating to the implementation of the Convention. It shall report regularly to the Conference of the Parties on all aspects of its work.

#### ***Comments on Article 16: Relationship with the UN Expert Group on International Cooperation in Tax Matters***

Article 16 establishes a link between the Convention and the UN Expert Group on International Cooperation in Tax Matters, which is an existing body.<sup>78</sup> The Convention specifies that the group shall provide the COP and other bodies of the Convention with technical advice relating to the implementation of the Convention. The approach of having a subsidiary body provide technical advice is somewhat similar to the approach taken in all three of the Rio Conventions, which each have a subsidiary body to provide scientific and technical advice.<sup>79</sup>

## **Article 17**

### **UN PUBLIC REGISTRY FOR CORPORATE TRANSPARENCY**

1. A UN public registry for corporate transparency is hereby established. Its functions shall be to ensure timely, effective and efficient access for the public to the following information:
  - (a) The beneficial owners of companies, trusts and similar legal structures, in accordance with Article 6 of the Convention; and
  - (b) The country by country reports of multinational corporations, in accordance with Article 7 of the Convention.
2. The information in the public registry shall be published as open data in a machine-readable format, and access shall be free of charge. The public registry shall be available in all official UN languages.
3. The registry shall be operated and maintained by the Secretariat of the Convention.

***Comments on Article 17: UN public registry for corporate transparency***

Article 17 establishes a public registry where all the information regarding corporate transparency (Articles 6 and 7 of the Convention) will be made available to the public. Having one central international registry, as opposed to numerous separate national registries, will reduce the administrative burden and help to avoid duplicative information, as well as make it easier for the public to access all the available information.

**Article 18**

**UN PUBLIC REGISTRY FOR TAX AND FISCAL POLICIES**

1. A UN Public Registry for Tax and Fiscal Policies is hereby established. Its functions shall be to ensure timely, effective and efficient access for citizens to the following information:
  - (a) The information on tax policies and practices reported by Parties following Article 8 of the Convention; and
  - (b) The relationship between the tax systems, policies and practices and other international goals, obligations and commitments, which Parties will be reporting following Article 13 of the Convention.
2. The information in the public registry shall be published as open data in a machine-readable format, and access shall be free of charge. The public registry shall be available in all official UN languages.
3. The registry shall be operated and maintained by the Secretariat of the Convention.

***Comments on Article 18: UN public registry for tax and fiscal policies***

Article 18 establishes a public registry of all information on tax and fiscal policies, which the Parties will be reporting under the Convention.

Having one central public registry for this information will increase the accessibility of information for the public and reduce the reliance on tax advisors.

## Article 19

### UN GLOBAL ASSET REGISTRY

1. The Conference of the Parties shall consider establishing a UN Global Asset Registry.
2. A UN Global Asset Registry should support Parties in accessing the information necessary to ensure effective and efficient tax systems, fight tax-related illicit financial flows as well as increase the public availability and accessibility of statistical information concerning ownership structures, wealth and inequalities.
3. A UN Global Asset Registry must ensure protection of human rights, including the right to privacy and related data protection.
4. A UN Global Asset Registry should build on, and avoid duplicating:
  - (a) The reporting obligations, methodologies and procedures developed under Article 5, 6 and 7; and
  - (b) The UN Public Registry for Corporate Transparency established under Article 17 above.

#### ***Comments on Article 19: UN Global Asset Registry***

Lack of information about the distribution and ownership of wealth and assets is a central challenge for the fight against inequality and illicit financial flows. It also undermines the effectiveness of key measures that can combat inequalities, such as wealth taxes. A Global Asset Registry would help to resolve these challenges by providing data on who owns what and where.

The call for a global asset registry was put forward by Thomas Piketty in 2014,<sup>80</sup> and the idea has since been supported and further developed by a number of leading experts, academics and organizations, including, for example, Gabriel Zucman,<sup>81</sup> Tax Justice Network<sup>82</sup> and the Independent Commission for the Reform of International Corporate Taxation (ICRICT).<sup>83</sup>

Article 19 provides a mandate for the Conference of the Parties to set up a UN Global Asset Registry. Unlike the registries established under Articles 17 and 18, the UN Global Asset Registry would not be fully accessible to the public due to the need to protect privacy and provide data protection for individuals. While protecting the confidential data, the registry could, however, provide important statistical information about wealth distribution to the public.

The information in the registry would have clear overlaps with the information that is foreseen to be exchanged confidentially between governments under Article 5, and therefore Article 19 specifies that the Global Asset Registry should build on, rather than duplicate, the work under Article 5. The same is the case for the information that will be collected, reported and published on corporate ownership and transparency following Articles 6, 7 and 17.

## **PART V: REPORTING, COMPLIANCE AND SETTLEMENT OF DISPUTES**

### **Article 20**

#### **REPORTING**

1. Each Party that is not a developing country shall submit an annual report on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of the Convention. Developing country Parties shall submit such information within a timeline to be determined by the Conference of the Parties, while taking into account their different capacities and national circumstances.
2. In line with guidance to be developed by the Conference of the Parties, each Party shall report specifically on its fulfilment of the following obligations and commitments:
  - (a) The Transparency Standard following from Article 9 above;
  - (b) The Tax Standard following from Article 12 above; and
  - (c) The relationship between its tax system, policies and practices and other international goals, obligations and commitments, in line with Article 13 of this Convention.
3. Each Party shall submit its report to the Secretariat, which shall ensure that the report is made available to the public in a timely manner.

#### ***Comments on Article 20: Reporting***

Article 20 outlines the obligations that Parties have to report on their overall implementation of the Convention, as well as on the specific items for which the Convention requires reporting. These reports play a central role in relation to the review of implementation, including the peer review foreseen in Article 21.

### **Article 21**

#### **COMPLIANCE**

1. The Conference of the Parties shall undertake a periodic review, based on objective and reliable information, of the fulfilment by each Party of its obligations and commitments under this Convention in a manner that ensures equal treatment with respect to all States. The review shall be a transparent and cooperative mechanism, open to participation of observers and based on an interactive dialogue, with the full involvement of the Party concerned and with consideration given to its specific capacities and national circumstances. The Conference of the Parties shall develop the modalities and ensure the necessary time allocation for the periodic review mechanism within one year after holding its first session.

2. The periodic reviews of Parties shall be informed by, inter alia, the reports submitted by Parties under Article 20 and relevant research and publications, including the reports produced by the Secretariat following Article 15.1(h). Through the Secretariat, civil society organizations, academics and other relevant actors shall also be invited to submit information to be considered as part of the periodic review.
3. The Conference of the Parties shall consider and, if appropriate, approve further procedures and institutional mechanisms to ensure compliance with the provisions of this Convention and address cases of non-compliance. If appropriate, such procedures and mechanisms shall include provisions to offer advice or assistance, especially to developing countries.

### ***Comments on Article 21: Compliance***

Article 21 contains both a peer review mechanism (paragraph 1) as well as an obligation for the COP to consider further measures as necessary to ensure compliance (paragraph 3).

Peer review mechanisms are known from numerous treaties and intergovernmental mechanisms already. That includes, for example, the OECD's Inclusive Framework on BEPS. However, the mechanism outlined in Article 21.1 does not build on the approach taken by the OECD in the Inclusive Framework, but rather on the Universal Periodic Review (UPR) of the UN Human Rights Council.<sup>84</sup> One key reason for this is that the UPR process is a transparent process that allows, and in fact encourages, participation by observers. This includes civil society, which plays an important role in the mechanism, including by providing input and information, as well as increasing public accountability of governments in relation to the implementation of their obligations and commitments.<sup>85</sup>

The same type of transparency and stakeholder participation is not provided under the OECD's Inclusive Framework. For example, the peer review documents for BEPS Action 13 on Country-by-Country Reporting specify that: "Because peer review is an intergovernmental process, business and civil society groups' participation in the formal evaluation process and, in particular, the evaluation exercise and the discussions in the [Country-by-Country] Reporting Group is not specifically solicited."<sup>86</sup> However, as exemplified by the Human Rights Council Universal Periodic Review process, intergovernmental processes can include participation by observers, and this is the approach that is proposed in Article 21.1.

The obligation for the COP to consider further compliance measures is an approach that ensures that the issue of compliance can evolve over time to match the needs and experiences with implementation. A similar approach has been taken in other international agreements such as the Nagoya Protocol.<sup>87</sup>

## Article 22

### **DISPUTE SETTLEMENT**

1. In the event of a dispute between two or more Parties concerning the interpretation or application of this Convention, the Parties concerned shall seek, through diplomatic channels and their competent authorities, a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.
2. The Conference of the Parties shall consider and, if appropriate, approve further procedures and institutional mechanisms to ensure that disputes are effectively resolved in line with the objectives, principles and provisions of this Convention.

#### ***Comments on Article 22: Dispute settlement***

Article 22.1 introduces an obligation for Parties to seek to resolve any disputes through negotiation or other means. Such a provision is common in international agreements, and the specific wording in Article 22.1 builds to a large extent on Article 27.1 of the WHO Framework Convention on Tobacco Control.<sup>88</sup>

An issue that has been discussed in the context of the international tax rules is arbitration and other types of mandatory binding dispute resolution mechanisms, which developing countries in particular have raised concerns about.<sup>89</sup> The Convention does not include any such mechanism, nor does it, for example, provide the option for parties to opt into an approach whereby disputes would be submitted to the International Court of Justice (these are two dispute settlement approaches that have been used on an optional basis in other UN Conventions, such as the Convention on Biological Diversity<sup>90</sup> and the UN Framework Convention on Climate Change).<sup>91</sup> In recognition of the fact that these issues require more discussion and time for experiences to be gathered and consensus to be developed, Article 22.2 instead introduces an obligation for the COP to consider further measures.

However, the primary mechanism foreseen to avoid disputes is strengthening of international tax cooperation (including through Article 10) and the development of simpler, clearer, more coherent and effective international tax rules (including through a new system for taxation of multinational corporations under Article 11), both of which aim to prevent disputes from happening in the first place.

## PART VI: DEVELOPMENT OF THE CONVENTION AND PROTOCOLS

### *Overall comments on Part VI:*

#### *Development of the Convention and protocols*

Articles 23-24 regarding adoption of protocols and amendments are relatively standard in UN framework conventions. In particular, protocols play an important role in framework conventions, since they provide a tool for the Parties to formulate new commitments, institutions, processes, etc. in a stepwise approach as the level of consensus among the Parties grows and the work of the convention moves forward.

### Article 23

#### PROTOCOLS

1. The Parties shall cooperate in the formulation and adoption of protocols to this Convention.
2. Protocols shall be adopted at a meeting of the Conference of the Parties.
3. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before such a session.
4. The requirements for the entry into force of any protocol shall be established by that instrument.
5. Only Parties to this Convention may be Parties to a protocol.
6. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

### Article 24

#### AMENDMENT OF THE CONVENTION OR PROTOCOLS

1. Amendments to this Convention may be proposed by any Party. Amendments to any protocol may be proposed by any Party to that protocol.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to the Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention for information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention, or to any protocol, by consensus. If all efforts at consensus have been exhausted,

and no agreement has been reached, the amendment shall as a last resort be adopted by a two-thirds majority vote of the Parties to the instrument in question present and voting at the meeting and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 of this Article shall enter into force among Parties that have accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.
5. For the purposes of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.

## PART VII: FINAL PROVISIONS

### *Overall comments on Part VII: Final provisions*

The final provisions to the Convention (Articles 25-32) are quite standard provisions for UN treaties. One thing to note is that the Convention allows for “regional economic integration organizations” to become parties, which means that, for example, the European Union (EU) would be able to join. This is similar to the approach in many other UN agreements, such as all the Rio Conventions<sup>92</sup> and their protocols, the UN Convention Against Corruption<sup>93</sup> and many others.

### Article 25

#### RIGHT TO VOTE

1. Except as provided for in paragraph 2 of this Article, each Party to this Convention or to any protocol shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their Member States exercise their right to vote, and vice versa.

### Article 26

#### SIGNATURE

This Convention shall be open for signature at [place] by all States and any regional economic integration organization from [date] until [date], and at the United Nations Headquarters in New York from [date] to [date].

### Article 27

#### RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Convention without any of its Member States being a Party shall be bound by all the obligations under the Convention.

In the case of such organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depository, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

## **Article 28**

### **ENTRY INTO FORCE**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States that are members of the organization.

## **Article 29**

### **RESERVATIONS**

No reservations may be made to this Convention.

#### ***Comments on Article 29: Reservations***

Article 29 specifies that no reservations may be made to the Convention. This is in line with what can be found in many other UN treaties, including, for example, the three Rio Conventions<sup>94</sup> and the WHO Framework Convention on Tobacco Control.<sup>95</sup> However, it is very different from the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. As outlined in Article 28 of the OECD Convention, different reservations are expressly permitted by over 20 different Articles in that Convention, with some of the Articles allowing several different types of reservations.<sup>96</sup>

In addition to the complexity created by the many reservations allowed under the OECD Convention, the current international tax system is further complicated by the fact that the

same Convention allows all signatories to pick and choose to apply the Convention to some of their bilateral tax treaties, but not to others. The OECD Convention will only enter into force for those bilateral tax treaties for which both signatories have chosen to apply the Convention.<sup>97</sup>

With the thousands of bilateral tax treaties that exist, and with the challenge of mapping which of those treaties are covered by the OECD Convention and, if so, which reservations each of the signatories to the bilateral treaty has made to the OECD Convention, the international tax system has become a multi-layered maze, which in itself contributes to the failure of the current system.

As a solution to this problem, the proposed UN Tax Convention aims to provide a solid, clear, coherent framework that applies to all signatories without any possibilities for reservations. This would reduce the level of complexity substantially.

### **Article 30**

#### **WITHDRAWALS**

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

### **Article 31**

#### **DEPOSITARY**

The Secretary-General of the United Nations shall be the Depositary of this Convention and amendments thereto and of protocols adopted in accordance with Article 23.

### **Article 32**

#### **AUTHENTIC TEXTS**

The original of this Convention – of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic – shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at [city][date]

## ANNEX 2

### UN DECISIONS REFERENCED IN THE PREAMBULAR PARAGRAPHS 4-8 OF THE CONVENTION

Preambular paragraph 4 recalls the outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, which was held in Doha in 2008.<sup>98</sup> It includes specific references to language contained in paragraph 16 of the document, which states:

*“16. We will continue to undertake fiscal reform, including tax reform, which is key to enhancing macroeconomic policies and mobilizing domestic public resources. We will also continue to improve budgetary processes and to enhance the transparency of public financial management and the quality of expenditures. We will step up efforts to enhance tax revenues through modernized tax systems, more efficient tax collection, broadening the tax base and effectively combating tax evasion. We will undertake these efforts with an overarching view to make tax systems more pro-poor. While each country is responsible for its tax system, it is important to support national efforts in these areas by strengthening technical assistance and enhancing international cooperation and participation in addressing international tax matters, including in the area of double taxation. In this regard, we acknowledge the need to further promote international cooperation in tax matters, and request the Economic and Social Council to examine the strengthening of institutional arrangements, including the United Nations Committee of Experts on International Cooperation in Tax Matters.”*

Preambular paragraph 5 recalls the Addis Ababa Action Agenda (AAAA), which was the outcome document of the Third International Conference on Financing for Development held in Addis Ababa in 2015.<sup>99</sup> The preambular paragraph includes specific references to language contained in the following paragraphs from the Addis Ababa Action Agenda:

*“22. We recognize that significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development and achieving the sustainable development goals. We commit to enhancing revenue administration through modernized, progressive tax systems, improved tax policy and more efficient tax collection. We will work to improve the fairness, transparency, efficiency and effectiveness of our tax systems, including by broadening the tax base and continuing efforts to integrate the informal sector into the formal economy in line with country circumstances. In this regard, we will strengthen international cooperation to support efforts to build capacity in developing countries, including through enhanced official development assistance (ODA). We welcome efforts by countries to set nationally defined domestic targets and timelines for enhancing domestic revenue as part of their national sustainable development strategies, and will support developing countries in need in reaching these targets.”*

*“27. We commit to scaling up international tax cooperation. We encourage countries, in accordance with their national capacities and circumstances, to work together to strengthen transparency and adopt appropriate policies, including multinational enterprises reporting country-by-country to tax authorities where they operate; access to beneficial ownership information for competent authorities; and progressively advancing towards automatic exchange of tax information among tax authorities as appropriate, with assistance to developing countries, especially the least developed, as needed. Tax incentives can be an appropriate policy tool. However, to end harmful tax practices, countries can engage in voluntary discussions on tax incentives in regional and international forums.”*

*“28. We stress that efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing States and African countries. We welcome the participation of developing countries or their regional networks in this work, and call for more inclusiveness to ensure that these efforts benefit all countries. We welcome ongoing efforts, including the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and take into account the work of the Organization for Economic Cooperation and Development (OECD) for the Group of 20 on base erosion and profit shifting. We support strengthening of regional networks of tax administrators. We take note of ongoing efforts, such as those of IMF, including on capacity-building, and the OECD ‘Tax Inspectors without Borders’ initiative. We recognize the need for technical assistance through multilateral, regional, bilateral and South-South cooperation, based on different needs of countries.”*

Preambular paragraph 6 reaffirms the commitment to significantly reduce illicit financial flows by 2030 as contained in paragraph 23 of the Addis Ababa Action Agenda<sup>100</sup> and the 2030 Agenda for Sustainable Development, target 16.4.<sup>101</sup>

From the Addis Ababa Action Agenda:

*“23. We will redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation. We will also reduce opportunities for tax avoidance, and consider inserting anti-abuse clauses in all tax treaties. We will enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities. We will make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.”*

From the 2030 Agenda for Sustainable Development:

*“16.4. By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.”*

Preambular paragraph 7 reaffirms the commitment contained in Sustainable Development Goal 10, which is to reduce inequalities within and among countries.<sup>102</sup>

Preambular paragraph 8 reaffirms the commitment to strengthen the means of implementation, as contained in Sustainable Development Goal 17, and in particular target 17.1, which states:

*“17.1 Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.”<sup>103</sup>*

## ENDNOTES

- 1 Senegal, speaking on behalf of the African Group at the UN High Level meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Return, 16 May 2019, New York. The full statement can be found here: <http://webtv.un.org/watch/part-1-high-level-meeting-on-international-cooperation-to-combat-illicit-financial-flows-and-strengthen-good-practices-on-assets-return/6037733391001>, (starting at 2:49:30).
- 2 United Nations, 'Financing for Development in the Era of COVID-19 and Beyond. Menu of Options for the Consideration of Heads of State and Government Part II', September 2020, p.124, [https://www.un.org/sites/un2.un.org/files/financing\\_for\\_development\\_covid19\\_part\\_ii\\_hosg.pdf](https://www.un.org/sites/un2.un.org/files/financing_for_development_covid19_part_ii_hosg.pdf)
- 3 United Nations, 'Financial Integrity for Sustainable Development. Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda', February 2021, [https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c\\_FACCTI\\_Panel\\_Report.pdf](https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACCTI_Panel_Report.pdf)
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- 7 For more information on framework conventions, see for example Daniel Bodansky, 'Framework Convention on Tobacco Control. The Framework Convention/Protocol Approach', World Health Organization, Technical Briefing Series Paper 1, WHO/NCD/TFI/99.1, 1999, <https://apps.who.int/iris/handle/10665/65355>
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- 9 United Nations, 'United Nations Convention Against Transnational Organized Crime and the Protocols Thereto', adopted 2000, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>
- 10 Tax Justice Network, Global Alliance for Tax Justice and Public Services International, 'The State of Tax Justice 2021', [https://taxjustice.net/wp-content/uploads/2021/11/State\\_of\\_Tax\\_Justice\\_Report\\_2021\\_ENGLISH.pdf](https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf)
- 11 See G20, 'G20 Leaders' Communiqué. Antalya Summit, 15-16 November 2015', <https://www.consilium.europa.eu/media/23729/g20-antalya-leaders-summit-communicue.pdf> and OECD, 'Inclusive Framework on BEPS Progress Report July 2016 – June 2017', 2017, <https://www.oecd.org/tax/BEPS/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf>
- 12 See OECD (2018), *OECD/G20 Inclusive Framework on BEPS*, June 2018, <https://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf>
- 13 OECD (2015), *OECD Secretary-General Report to the G20 Finance Ministers and Central Bank Governors*, <http://www.oecd.org/g20/topics/taxation/oecd-secretary-general-tax-report-to-g20-FMCBG-september-2015.pdf>, page 11.
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- 15 Eurodad analysis of the list of members of the Inclusive Framework. See OECD, 'Members of the OECD/G20 Inclusive Framework on BEPS', Updated November 2021, <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>
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