Third Session, UN Tax Convention Negotiations
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Article 4 – Unitary Taxation

Intervention by Everlyn Muendo from TJNA

Thank you Chair for the opportunity to speak.

I speak on behalf of Tax Justice Network Africa as well as the African CSOs Working Group on the UN Tax Convention.

Distinguished Delegates, as civil society, our goal is not only to ensure that the commitment on article 4 on fair allocation of taxing rights, remains ambitious but also actionable. Rather than trying to develop a "one size fits all" solution to fair allocation of taxing rights, the issue should be integrated as a cross-cutting element, including in Article 5 on High-net worth individuals, as well as a new separate Article 4 bis on Equitable taxation of MNEs. Historically, the residence/ source principle and the arm's length principle have been utilized to systematically erode the taxing rights of Global South countries. We believe that the mechanism envisioned for article 4 should therefore not further prop these principles. We believe that unitary taxation and formulary apportionment as new article 4 bis can adequately mechanise the fair allocation of taxing rights.

This system which predates the arm's length principle provides a better chance of ensuring that taxation takes place where economic activity is carried out. Since this is the week where we discuss the institutional arrangements of the Framework Convention, we believe that while the Convention should contain the overall decision, mandate and timeline on unitary taxation and formulary apportionment, the specific rules to operationalize the decision can be developed by the future Conference of the Parties (COP). While there are arguments that this should be a function that should be further elaborated by the Protocols, we caution strongly against this approach. For instance, while there have been discussions on unitary taxation and formulary apportionment under workstream 2 on the protocol on cross- border services, we run the risk of 'ring-fencing' a particular sector or economic activity i.e. services yet change is needed across the board.

We understand there have previously been iterations of unitary taxation in other discussions but those discussions were not universal, they did not take into consideration the different capacities and needs of particularly Global South countries and instead resulted in profit allocation rules that severely shortchanged Global South countries. Article 4 has the potential to deliver on a better deal and the potential to offer more revenue for Global South countries than gross based taxes which are severely curtailed by double taxation agreements.

Thank you once again for the opportunity to speak.