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Article 5 – Fair Allocation of Taxing Rights

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Co-lead, Distinguished Delegates,

I speak on behalf of the Global Alliance for Tax Justice and the African Civil Society Working Group on the UN Tax Convention.

We welcome the progress reflected in the current draft text, particularly the stronger recognition of the importance of a fair allocation of taxing rights. This is an important step towards fulfilling the mandate established in the Terms of Reference. Paragraph 10(a) identifies *"fair allocation of taxing rights, including equitable taxation of multinational enterprises"* as a core area for the Convention, while paragraph 9(f) calls for an international tax system that contributes to sustainable development by *"ensuring fairness in the allocation of taxing rights."* While the draft has evolved, important issues remain.

We remain concerned by the inclusion of value creation among the parameters for determining a fair allocation of taxing rights. We are concerned that the concept is too vague and subjective to be relied upon to adequately protect source country taxing rights. This concept that has mainly been explored within the context of the implementation of the arm's length principle has not been adequately reliable. While the intention is to ensure that profit allocation aligns with substance, in many instances due to the subjective nature of functional analysis, has instead facilitated profit shifting by allowing profits to be allocated to low-tax jurisdictions such as preferential IP regimes and has not effectively reflected where genuine economic activity exists. We therefore encourage Member States to reconsider the inclusion of value creation as a guiding parameter for this

Article. We believe that reference to where real economic activity is adequate in protecting source country jurisdiction and therefore we offer our support for this text.

Finally, we encourage Member States to strengthen the implementation of this Article. Rather than merely committing Parties to *"explore and pursue cooperative approaches to support the fair allocation of taxing rights,"* the Convention should expressly mandate the Conference of the Parties to periodically review the implementation and effectiveness of this Article and recommend further measures to advance a genuinely fair allocation of taxing rights. We are happy to provide proposed text that reflects our position on this so far.

Thank you.