ICRICT's statement on the negotiation of a UN Framework Convention on International Tax Cooperation (UN FCITC)

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Why do we need a UN convention on tax?

The negotiation of the UN Framework Convention on International Tax Cooperation is a landmark opportunity to reform the outdated global tax architecture and to build a more inclusive and equitable international tax system, enabling countries to cooperate more effectively to ensure equitable taxation and to participate on an equal footing under clear, transparent rules of negotiation. It affords an opportunity to collectively address tax evasion and avoidance - by multinational enterprises (MNEs) and high-net worth individuals - and resolve gaps in global taxation arising from globalization and the digitalization of the world's economies. The efficiency of the international tax system has an important impact on the possibilities for raising domestic revenue for sustainable public financing, which, in turn, is necessary for sustainable and equitable development.

The cross-border movement of capital by financial firms, major asset owners and especially by MNEs has been an increasingly relevant feature of the global economy. While in some cases such movements are motivated by efficiency or other legitimate concerns, in other cases they are motivated by the desire to avoid or evade taxes; the latter movements undermine both global economic efficiency and equity, and may stymie the potential for growth of developing countries and emerging markets and the efforts of governments everywhere to meet the needs of their citizens.

Different national taxation norms and interstices between tax administrations create conflicts of interest among all actors, and double taxation arising from the concurrent exercise by two or more countries of their taxation rights may have an adverse effect on investments of productive or social value.

On the other hand, lack of administrative coordination between tax jurisdictions, profit shifting by MNEs and tax avoidance or evasion by individuals, results in the loss of vital tax revenue, capital flight and illicit financial flows. In today's world, zero or near zero taxation is more of a problem than double taxation. A host of jurisdictions have become known as tax and secrecy havens.

The current system of taxing MNEs' global profits based on transfer pricing supposedly using the arm's length principle has proven itself not fit for purpose in the 21st century world, where unfinished goods go across borders multiple times. This system has facilitated systemic tax avoidance by MNEs, undermining domestic resource mobilization in jurisdictions where these conglomerates make significant profits.

In addition, the past few decades have seen a rapid increase in the amount of double tax treaties signed between countries, from a global number of around 500 to more than 3,000. This network of bilateral tax treaties is skewed towards the needs of resident countries (home not only to the ultimate parent entities of multinational companies, but also, their intermediaries) as such treaties limit the taxing rights of source jurisdictions (often developing countries) restricting their ability to raise revenues.

The combination of transfer pricing and the preference of residence over source taxation in double tax treaties provides the foundation for an embedded global system of tax avoidance and a global tax regime which is complex, inefficient, and unfair.

In a similar way, globalization has opened new tax avoidance possibilities exploited by wealthy individuals around the world and for too long this has been accepted as an inevitable byproduct of capital market liberalization.

The result is that many countries' tax systems have become regressive: the super-rich have lower effective tax rates than other groups in society. This tax regressivity contributes to the rise of wealth concentration and is undermining social cohesion and the basic democratic principles of our societies.

The global design of the tax system is once again a key element of the problem here. The same limitations found in tax treaties covering payments between MNEs at source apply to the case of personal income. Further, tax treaties relating to personal wealth and income in some cases limit the possibility of extending taxresidency or applying exit taxes to individuals, in a world where golden visas are offered to high-net-worth individuals (HNWI) in connection with tax benefits in exchange for relatively modest investment.

In summary, the current design of the international tax architecture fosters tax avoidance and evasion by multinationals and the super-rich.

The negotiation of a UN Framework Convention on international tax cooperation provides a historic opportunity to revisit the recent efforts and advances in the fight to stop tax avoidance and evasion by MNEs and individuals, and to deliver more comprehensive and effective solutions which fully consider the needs and priorities of all countries.

ICRICT strongly supports such negotiation and recommends that it is developed in good faith via an inclusive process, following the already established decision-making rules of the United Nations General Assembly.

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Key issues to be addressed by a UN Framework Convention on International Tax Cooperation

The Commission strongly suggests that the UN FCITC should include some basic principles and commitments:

- Equitable taxation of MNEs, based on:

    - Fair reallocation of taxing rights between countries, underpinned by the principles of unitary taxation and formulary apportionment of all profits of all multinationals across different jurisdictions.
    - The establishment of a nexus rule based on the principle of significant economic presence, whereby a taxable presence will be created in a country when a non-resident enterprise has a significant economic presence; defined as purposeful and sustained interaction with the economy of that country, including sales of goods and services by any means, including digital.
    - Coordinated taxation of windfall or excess profits.
    - The strengthening of anti-avoidance instruments and principles such as a 25% global effective minimum tax on the profits of MNEs.
    - The development of coordinated mechanisms for digital services taxes.
    - Public country-by-country reporting of MNEs' economic activities based on the robust Global Reporting Initiative standard for public reporting on tax (**Tax: 207**).

- Effective taxation of high-net worth individuals, including common principles and minimum standards for the taxation of the very rich and the super-rich, and anti-avoidance instruments such as a global minimum tax on income and wealth (both flows and stocks). This should include a commitment by all countries to ensure effective taxation of wealth as a complement to taxation of income.

- Transparency and exchange of information for tax purposes, including common principles and minimum standards for ensuring transparency of wealth ownership. This should include the creation of a **global asset register** and global standards for asset registers including beneficial ownership identification (including for trusts which obfuscate beneficial ownership), public data components and components to be shared though the automatic exchange of information among tax authorities. Transparency commitments, information sharing and administrative cooperation should also include inter alia:

    - Minimum domestic transparency commitments (e.g. inter-agency sharing of information).
    - Global administrative and judicial cooperation among jurisdictions.
    - Global access to relevant databases.

- Special and differential treatment. In the same way as is the case for trade negotiations, the principle of special and differential treatment should be part of the basis for the negotiation. Without undermining the general coherence of the tax architecture, low and middle income countries should be allowed to have more favourable treatment as well as special rights to address specific constraints.

The Convention and its protocols, as well as the negotiations that would lead to these, should be governed by the same principles and follow the approved **Terms of References** .

Such principles outlined above should guide the negotiations and outcomes of the UN FCITC in the first place, but also of its protocols.

Each protocol, because of its own nature, could address several of the commitments of the UN FCITC.

For instance, the following protocols could include measures that would address tax evasion and avoidance by high-net worth individuals: measures against tax-related illicit financial flows; addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

In a similar way, the following protocols could include measures to address tax-related IFFs: taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy, taxation of the digitalized economy; measures against tax-related illicit financial flows; addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

Two early protocols will be negotiated alongside the framework convention. The first agreed protocol is 'Taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy' and the second protocol will be chosen from a list of 4 different protocols. It is likely that the second protocol will be either on 'addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States' or on 'measures against tax-related illicit financial flows'. For this reason, Appendices A, B and C outline the relevance of such protocols and the different measures each protocol should include.