

Co-Lead's Draft Framework Convention [24 October 2025]

Submission on Proposed Amendments to Articles 4, 9, and 22

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ABSTRACT

This submission proposes three amendments to the Co-Lead's Draft Framework Convention Template to strengthen the Convention's effectiveness whilst respecting state sovereignty. First, Article 4 on fair allocation of taxing rights should explicitly address digital economy taxation by clarifying that business activities include digital commerce and that physical presence is not required for source-country taxing rights. Second, Article 9 on sustainable development should be enhanced to explicitly connect international tax cooperation to domestic resource mobilisation, requiring assessment of fiscal and distributional effects, data collection, and reporting on contributions to sustainable development financing. Third, Article 22 should add paragraph (5) establishing that states may consider protocol participation when negotiating bilateral tax arrangements and may provide differentiated treatment based on reciprocal commitments, preventing strategic participation whilst preserving optionality. These modest proposals create clarity on scope, establish operational commitments for sustainable development, and provide safeguards against fragmentation without mandating protocol ratification or overriding sovereignty.

ARTICLE 4: FAIR ALLOCATION OF TAXING RIGHTS

The Co-Lead's Draft on Article 4 states:

"The States Parties agree that every jurisdiction where a taxpayer conducts business activities, including jurisdictions where value is created, markets are located and revenues are generated, have a right to tax the income generated from such business activities."

The language should be explicit enough for digital economy to be captured. Even though this will be addressed as part of Protocol 1, it is critical for this principle to be established in the Convention itself. Without explicit language, there is risk of narrow interpretation that "business activities" contemplates only traditional physical commerce, perpetuating the current situation where digital platforms extract value from African markets without paying source-country taxes.

Either an insertion to Article 4 to read:

"The States Parties agree that every jurisdiction where a taxpayer conducts business activities, including jurisdictions where value is created, markets are located and revenues are generated, have a right to tax the income generated from such business activities. **For purposes of this Article, business activities include the provision of goods or services through digital means, and physical presence in a jurisdiction is not required for that jurisdiction to exercise taxing rights where users or customers are located, data is collected or utilized, or other value is derived from that jurisdiction's market.**"

Or in the definitions (Article 3) to define "business activities" as:

"Business activities" includes the conduct of any commercial, industrial, financial, or professional activities, including the provision of goods or services through digital means, whether or not such activities involve physical presence in a jurisdiction.

This clarification achieves three objectives without pre-judging Protocol 1 negotiations on digital economy taxation.

- First, it explicitly confirms that Article 4 applies to digital business models, preventing arguments that "business activities" contemplates only traditional physical commerce.
- Second, it establishes that physical presence requirements do not override source countries' taxing rights where value is created or markets are located directly addressing the loophole enabling digital platforms to avoid source-country taxation.
- Third, it identifies multiple bases for nexus (users/customers, data collection/utilization, market value) without prescribing which basis Protocol 1 must adopt, preserving negotiating flexibility whilst establishing principle.

ARTICLE 9: SUSTAINABLE DEVELOPMENT

The Co-Lead's Draft on Article 9 states:

“Taking into account their different capacities, the States Parties agree to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner.”

The language should be operational enough for domestic resource mobilisation to be explicitly connected to sustainable development. Even though sustainable development is appropriately recognised as a Convention objective, the current aspirational language provides no guidance on what this means practically or how to assess whether the Convention achieves this objective. Given that domestic resource mobilisation is foundational to financing the SDGs and that international tax cooperation directly affects revenue collection, Article 9 must move beyond rhetoric to establish operational commitments.

An insertion to Article 9 is proposed to read:

“Taking into account their different capacities, the States Parties agree to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner. **The States Parties recognise that this requires adequate domestic resources to fund public services, infrastructure, and social protection systems that enable inclusive economic participation.**

To this end, the States Parties shall, taking into account their different capacities:

- (a) Assess the fiscal and distributional effects of international tax measures;**
- (b) Collect and analyse relevant data, including disaggregated data where administratively feasible, as part of their reporting obligations under Article 14; and**
- (c) Report to the Conference of States Parties on how international tax cooperation contributes to domestic resource mobilisation and sustainable development.”**

The existing Article 9 contains only aspirational language without operational content. “Contribute to the achievement of sustainable development in a balanced and integrated manner” provides no guidance regarding what this means practically or how to assess whether the Convention achieves this objective. More fundamentally, the current text ignores the essential connection between sustainable development and adequate public resources. The Addis Ababa Action Agenda recognised domestic resource mobilisation

as foundational to financing the SDGs. When profit shifting drains US\$88.6 billion annually from Africa, these are not abstract technical matters but direct constraints on states' capacity to finance education, healthcare, infrastructure, and social protection.

The proposed insertion explicitly connects sustainable development to domestic resource mobilisation by recognising that achieving sustainable development “requires adequate domestic resources to fund public services, infrastructure, and social protection systems.” This shifts Article 9 from generic sustainable development rhetoric to focused emphasis on the fiscal dimension, precisely the dimension international tax cooperation most directly affects. The phrase “enable inclusive economic participation” acknowledges that sustainable development requires not merely aggregate economic growth but rather growth that enables all populations to participate in economic life. This requires public investment in education, healthcare, infrastructure, and social protection, all dependent on adequate revenue collection.

Paragraph (a) requires states to “assess the fiscal and distributional effects of international tax measures.” This creates an obligation to evaluate impacts rather than merely asserting sustainable development contributions. When negotiating protocols or implementing Convention provisions, states must consider both revenue effects (will this increase or decrease tax collection?) and distributional effects (who benefits and who bears costs?). For example, a protocol on digital economy taxation should assess whether it increases developing countries' revenue collection from digital platforms currently avoiding source-country taxation. A protocol on dispute resolution should evaluate whether it disproportionately benefits multinational enterprises challenging developing countries' taxation authority. Such assessments enable evidence-based evaluation of whether international tax cooperation serves sustainable development.

Paragraph (b) links to Article 14's data collection requirements, specifying that relevant data includes “disaggregated data where administratively feasible.” This acknowledges that assessing distributional effects requires understanding how tax measures affect different populations particularly whether measures disproportionately affect women, marginalised groups, or particular economic sectors. The phrase “where administratively feasible” accommodates capacity constraints whilst establishing data collection as an obligation rather than optional aspiration. States cannot decline data collection claiming excessive burden without demonstrating genuine administrative infeasibility.

Paragraph (c) creates reporting obligations to the Conference of States Parties on “how international tax cooperation contributes to domestic resource mobilisation and sustainable development.” This enables accountability and collective assessment of whether the Convention achieves its stated objectives.

Currently, international tax initiatives often proceed without systematic evaluation of development impacts. The OECD BEPS project claimed to address developing country concerns yet provided limited evidence regarding actual revenue impacts for developing countries. Article 9(c) prevents similar outcomes by requiring regular reporting enabling

the Conference to assess whether the Convention delivers on sustainable development commitments. Each provision includes “taking into account their different capacities” acknowledging genuine differences in administrative resources and technical expertise. However, the structure shifts capacity from excuse for inaction to basis for differentiated implementation. States with limited capacity remain obligated to pursue these objectives but may implement them differently than states with greater capacity, and may request technical assistance under Article 11.

ARTICLE 22: RELATION WITH PROTOCOLS

The Co-Lead’s Draft on Article 22 currently contains four paragraphs establishing that:

- (1) The Convention may be supplemented by protocols;
- (2) Each protocol establishes its own entry into force requirements;
- (3) Protocol participation requires Convention ratification; and
- (4) Convention parties are not bound by protocols they have not ratified.

The language should be strong enough for protocol optionality to be preserved whilst preventing strategic participation that undermines the Convention’s objectives. Protocol optionality is essential for respecting state sovereignty and accommodating diverse capacities. However, optionality without safeguards risks strategic behaviour where powerful states secure benefits whilst avoiding obligations, reproducing the asymmetries that necessitated this Convention.

An insertion of Article 22(5) is proposed to read:

“Recognising that effective international tax cooperation depends on reciprocal commitments, States Parties shall, when negotiating or revising bilateral tax agreements, give due consideration to whether the other State Party has participated in protocols implementing the core commitments established in Articles 4, 6, 7, and 8 of this Convention. States Parties participating in such protocols may, in their mutual relations, provide treatment that reflects their participation in such protocols. When applying most-favoured-nation treatment or non-discrimination principles, States Parties may distinguish between States Parties based on participation in protocols, provided that such distinction is reasonably related to the objectives of this Convention and does not preclude non-participating States from subsequently joining protocols.”

Protocol optionality is essential for respecting state sovereignty and accommodating diverse capacities. However, without Article 22(5), states face a strategic dilemma. If State A ratifies protocols on fair allocation of taxing rights and addressing harmful tax practices whilst State B declines these protocols but ratifies protocols on mutual

assistance and dispute resolution, State A may find itself obligated to provide assistance to State B whilst receiving no reciprocal commitments on matters essential to domestic resource mobilisation.

Currently, bilateral tax treaties operate independently from the Framework Convention. A state could ratify the Convention, decline protocols requiring meaningful obligations, yet continue negotiating bilateral treaties that secure benefits from other states' Convention commitments without reciprocal undertakings. This creates asymmetric outcomes where powerful states extract advantages without accepting corresponding obligations.

Article 22(5) does not mandate protocol ratification. States retain absolute discretion regarding which protocols to ratify. Instead, it establishes that states may take protocol participation into account when negotiating bilateral arrangements. This creates incentives for coherent participation without infringing sovereignty.

The provision operates through three mechanisms:

- First, it requires states to “give due consideration” to protocol participation when negotiating bilateral treaties. This creates transparency expectations without mandating particular outcomes. A state negotiating with a partner that has declined all protocols implementing fair allocation of taxing rights may reasonably seek different treaty terms than with a partner that has ratified such protocols.
- Second, it permits states participating in protocols to “provide treatment that reflects their participation” in mutual relations. Two states both committed to protocols on addressing harmful tax practices may reasonably establish closer cooperation than the Convention minimum requires. This enables willing coalitions to advance beyond baseline standards without preventing broader Convention participation.
- Third, it clarifies that most-favoured-nation treatment and non-discrimination principles permit differentiation based on protocol participation. International trade law establishes that MFN obligations generally prohibit treating similarly situated parties differently. However, states committed to different levels of tax cooperation are not similarly situated. A state ratifying protocols on information exchange, addressing IFFs, and fair allocation of taxing rights demonstrates commitments justifying differentiated treatment compared to a state ratifying none of these protocols. The provision ensures such differentiation proves permissible provided it relates to Convention objectives and does not prevent subsequent protocol ratification.

Article 22(5) aligns with established treaty practice permitting differentiated treatment based on reciprocal commitments. Trade agreements routinely establish that preferential treatment applies only amongst parties undertaking reciprocal obligations. Regional integration agreements provide benefits exclusively to participants. The WTO framework

itself permits preferential treatment amongst parties to regional trade agreements whilst maintaining most-favoured-nation treatment as the general rule.

Similarly, tax treaty practice already recognises differentiation based on commitments undertaken. States negotiate different treaties with different partners reflecting diverse relationships and reciprocal undertakings. The OECD Multilateral Instrument permits bilateral relationships to vary based on which optional provisions parties select. Article 22(5) simply clarifies that protocol participation constitutes a legitimate basis for such differentiation.

CONCLUSION

These three proposals form a coherent package that strengthens the Convention's effectiveness whilst respecting state sovereignty. Article 4's clarification establishes that taxing rights extend to digital business activities, setting the framework principle for Protocol 1. Article 9's enhancement transforms sustainable development from rhetoric to operational commitment with measurable outcomes. Article 22(5) creates incentives for meaningful protocol participation whilst preserving optionality.

Together, these modest proposals create clarity on the Convention's scope, establish operational commitments for sustainable development financing, and provide safeguards against fragmentation without mandating protocol ratification or overriding sovereignty. They help ensure the Convention delivers substantive transformation in international tax cooperation rather than merely procedural improvements.

I respectfully urge the Intergovernmental Negotiating Committee to incorporate these proposals into the Framework Convention.

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