

Towards a UN Framework Convention on Tax Cooperation: Conceptual and Institutional Challenges in the Co-Lead's Draft

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On 24 October 2025, the first draft of a *Framework Convention on International Tax Cooperation* ("Co-Leads' Draft Framework Convention Template") was published. This draft will presumably serve as the basis for the third round of negotiations, scheduled to take place in Nairobi in November 2025. The publication of the first draft therefore represents a symbolically and politically significant step. Yet, upon closer examination, the text reveals a number of conceptual and structural weaknesses. Its provisions lack precision, overlap with existing frameworks, and remain silent on crucial institutional questions. **The present post aims to outline these weaknesses.**

1. Structure and Conceptual Coherence: Objectives, Principles, and Commitments

The draft convention remains structured around three main sections: *Objectives*, *Principles*, and *Commitments*. However, the articles on objectives and principles merely refer to the *terms of reference*. This tripartite division appears to aim at distinguishing normative aspirations from legally binding obligations. In practice, however, the boundaries between these sections are blurred.

A more coherent structure would integrate the *Objectives*, *Principles*, and *Commitments* into a single preambular section articulating the Convention's guiding philosophy, while reserving the *Commitments* for concrete legal obligations (if any). This would both streamline the text and reinforce the distinction between aspirational and binding content — a distinction central to any functional multilateral framework.

The goal of the Framework Convention should be to create a *framework for cooperation* — nothing more and nothing less. As the goals of such cooperation will inevitably evolve, negotiators should be cautious not to include overly far-reaching commitments that might undermine broad participation in the Convention.

2. Article 4 – The Allocation of Taxing Rights

Article 4 is arguably the most consequential and politically sensitive provision of the draft. It addresses the “fair allocation of taxing rights” among jurisdictions and asserts that every state has a legitimate right to tax income derived from activities or market participation within its territory.

If interpreted literally, Article 4 could function as a normative claim of precedence over existing bilateral tax treaties, potentially overriding any treaty obligations between the parties. Such a shift would have profound implications for the current international tax regime. In its present form, the provision risks destabilising the existing treaty network and could significantly affect cross-border investment. It should therefore be carefully redrafted to align with established international treaty norms.

3. Article 5 – Taxation of High-Net-Worth Individuals

Article 5 focuses on the taxation of high-net-worth individuals (HNWIs). It calls upon states to enhance cooperation and exchange of information to combat tax evasion and avoidance in this area. The policy intent is commendable; however, the provision remains remarkably indeterminate.

It offers no indication of the mechanisms through which such cooperation would be operationalised. Does the article envisage the expansion of the Automatic Exchange of Information (AEOI) framework under the Common Reporting Standard? Does it propose the creation of a new multilateral instrument or a minimum disclosure standard?

In its present form, Article 5 risks being interpreted as a mere political declaration without normative force. To enhance clarity and feasibility, the drafters might consider relocating the technical aspects of HNWI cooperation to a protocol to the Convention. This would allow for greater flexibility and progressive elaboration over time. As currently drafted, however, the article adds little value to the Convention

4. Articles 6–8 – Mutual Administrative Assistance, Illicit Financial Flows, and Harmful Tax Practices

Articles 6 through 8 deal with information exchange, mutual assistance, and cooperation with respect to illicit financial flows, tax avoidance and tax evasion, and the elimination of harmful tax practices. At first glance, these provisions mirror existing instruments such as the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, the tools

developed by the *Global Forum on Transparency and Exchange of Information for Tax Purposes*, and BEPS Action 5.

This raises a fundamental question of functional duplication — a concern voiced by several countries during the earlier negotiation rounds. If the UN Framework Convention merely reiterates commitments that are already well established under OECD auspices, what added value does it bring? Repackaging existing obligations risks creating greater legal uncertainty and institutional opacity.

A pragmatic solution would be to incorporate or reference existing OECD instruments through cross-referenced protocols. This would preserve continuity with established standards while enhancing legitimacy and universality through the UN framework. For instance, the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* could become a protocol to the UNFCC and be refined over time by the Conference of the Parties and the Secretariat.

5. Missing Institutional Provisions

One of the most striking omissions in the draft is the absence of institutional design elements. Except for placeholders, it contains no provisions establishing a Conference of the Parties (COP), a permanent Secretariat, or a dispute-resolution mechanism. These components form the institutional backbone of any framework convention.

Without them, it remains unclear how compliance will be monitored, how disputes will be resolved, or how the Convention will evolve through subsequent decisions or amendments. Their omission underscores the preliminary and conceptual nature of the current draft. It appears that the Co-Chairs' intention at this stage is primarily to build political consensus on substantive commitments before addressing the institutional architecture in later phases.

6. Normative Ambiguity and Interaction with Existing Instruments

Beyond its structural deficiencies, the draft suffers from broader normative ambiguity. It remains unclear how the proposed framework would interact with the existing network of bilateral tax treaties or with OECD-based multilateral instruments.

If the Convention were to assert primacy — even implicitly — over prior obligations, this would raise complex questions of treaty hierarchy and conflict resolution under

international law. Conversely, if it were merely to coexist alongside existing arrangements, its practical effect might be limited to declaratory influence rather than binding change.

This tension reflects a deeper political struggle: should the UN process serve as an alternative to, or a complement of, the OECD's normative authority in international tax governance? The current draft offers no clear answer. Negotiators should therefore prioritise agreement on the institutional foundation before delving into specific substantive provisions. My suggestion would be to institutionalize some of the work of the OECD through the UN Framework Convention.

7. Conclusion

The first draft represents an important milestone in the ongoing effort to institutionalise global tax governance. Yet, from a legal and institutional standpoint, it remains underdeveloped. Its structure is conceptually inconsistent, its operative provisions lack precision, and its institutional framework is to a large extent absent.

The draft raises more questions than it answers — particularly regarding its interaction with existing instruments. It is to be hoped that the upcoming negotiations will focus on institutional questions and that the Convention will be relieved of the pressure to transform every political commitment into a binding legal obligation.

So far, it has not served the negotiations well that the structure was copied from the UN Framework Convention on Climate Change, given that the objectives and existing legal regimes differ fundamentally.