SUBMISSION TO THE UN INTERGOVERNMENTAL NEGOTIATING COMMITTEE (INC) ON INTERNATIONAL TAX COOPERATION

Target Document: Co-Lead's Zero Draft of the UN Framework Convention (A/AC.298/CRP.32, 21 July 2026)

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Abstract

This submission evaluates the Co-Lead's Zero Draft of the UN Framework Convention on International Tax Cooperation (A/AC.298/CRP.32) through the lens of public international law, human rights jurisprudence, and international environmental law. Sovereign fiscal capacity constitutes the foundational material infrastructure required for states to realize economic, social, and cultural rights (ICESCR Art. 2(1)), fulfill the Right to Development, protect the right to a clean, healthy, and sustainable environment, and fund a globally Just Transition.

While CRP.32 rightly aligns tax cooperation with international human rights obligations in Article 2(c) and acknowledges environmental dimensions in Articles 2(d) and 4, it contains a critical structural flaw: Article 21(2) explicitly preserves legacy bilateral tax treaties and investment agreements. This preservation reproduces "disciplinary encasement," shielding transnational capital from host-state taxation and exposing developing nations to Investor-State Dispute Settlement (ISDS) claims when enacting legitimate tax or environmental measures.

To build a legally coherent and equitable tax architecture, this submission proposes five essential amendments to CRP.32:

1. **Normative Supremacy:** Converting Article 2(c) into a binding Supremacy Clause over legacy treaties and stabilization clauses in Article 21.
2. **Ecological & Unitary Taxation:** Replacing the obsolete Arm's Length Principle in Article 5 with Unitary Taxation and Formulary Apportionment that accounts for resource extraction and local environmental impacts.
3. **Corporate Tax Due Diligence:** Inserting Article 11 *bis* to integrate tax compliance into Business and Human Rights (BHR) due diligence mandates.
4. **Universal Data Sovereignty:** Eliminating commercial secret exceptions in Article 11 to guarantee unconditional access to tax data for developing nations.

5. **Climate Fiscality Alignment:** Strengthening Article 4 to directly link tax resource mobilization to state duties under international environmental law.

Doctrinal Analysis & Legal Priorities

1. Normative Hierarchy and Resolving Treaty Conflicts (Articles 2(c) & 21)

Article 21(2) of the Zero Draft preserves existing bilateral tax and investment treaties, establishing a rule of non-interference that undermines Article 2(c). Under public international law, a state's duty to mobilize maximum available resources for human rights (ICESCR Art. 2(1)) and environmental protection cannot be subordinated to legacy bilateral agreements. Preserving older Double Taxation Agreements (DTAs), Bilateral Investment Treaties (BITs), and stabilization clauses locks states into a regime of fiscal encasement, exposing them to Investor-State Dispute Settlement (ISDS) claims when closing tax loopholes or enacting climate regulations. Applying principles codified in Article 30 of the Vienna Convention on the Law of Treaties (VCLT), Article 21 must be amended to include a clear supremacy clause establishing that human rights obligations, environmental commitments, and this Convention prevail over conflicting prior agreements.

2. Re-evaluating MNE Legal Personality: Unitary & Ecological Taxation (Article 5)

The traditional tax framework treats subsidiaries of multinational enterprises (MNEs) as separate legal entities, applying the Arm's Length Principle (ALP) to intra-group transactions. Legally, this separate-entity doctrine ignores the economic reality of integrated transnational corporations, enabling artificial profit shifting to low-tax jurisdictions via transfer pricing and intellectual property licensing. This structural defect is particularly acute in the extractive and energy sectors, where host states bear the full brunt of environmental degradation but are denied their fair share of taxable profits. While Article 5(1) mandates allocation based on value creation, it leaves the ALP intact. To align international tax law with economic substance and environmental justice, the Convention must mandate Unitary Taxation with Formulary Apportionment, legally recognizing MNEs as single economic entities and allocating taxing rights based on objective factors including physical assets, natural resource extraction, local environmental impacts, employment, sales, and digital users.

3. Operationalizing Corporate Responsibility in International Law (New Article 11 bis)

International legal developments, including the UN Guiding Principles on Business and Human Rights (UNGPs), reject the view that corporate tax strategies exist outside human rights and environmental law. Systemic corporate tax avoidance directly erodes host-state public revenues, causing foreseeable harm to state capacity to fund healthcare, education, and climate adaptation. The Zero Draft limits obligations to inter-state cooperation in Articles 7 and 10, omitting direct corporate governance duties. The INC should insert Article 11 *bis* to impose binding Human Rights and Environmental Tax Due Diligence on MNEs, requiring corporations to assess, prevent, and publicly disclose aggressive tax structures that erode host-state fiscal capacity.

4. Sovereignty, Secrecy, and Information Rights (Article 11)

Customary international law recognizes sovereign equality, yet the current information exchange regime enforces asymmetric access to data. Article 11(3)(c) contains broad carve-outs allowing requested states to deny information on the grounds of commercial or trade secrecy, while Article 11(2) conditions data access on complex domestic administrative infrastructure. These exceptions create an unconscionable barrier for developing states, effectively shielding corporate tax bases and environmental liabilities from host-country oversight. Article 11 must be amended to mandate universal, unconditional Automatic Exchange of Information (AEOI) and public Country-by-Country Reporting (CbCR), establishing that commercial secrecy cannot override a state's sovereign right to access tax data.

5. Aligning Tax Governance with Environmental Rights & Climate Action (Article 4)

Environmental rights and the right to a clean, healthy, and sustainable environment are legally indivisible from economic and social rights. State obligations under international environmental law require significant domestic resource mobilization to finance climate adaptation, loss and damage mitigation, and a Just Transition. While Article 4 references sustainable development in its three dimensions, it lacks binding legal ties to source-state taxing rights. Article 4 must be strengthened to explicitly protect state regulatory freedom to implement environmental taxes and carbon levies without legal interference from legacy investment regimes.

Proposed Textual Amendments

1. ARTICLE 2(c) & 2(d) (PRINCIPLES)

(c) Alignment, in the pursuit of international tax cooperation, with States' obligations under international human rights law, recognizing that progressive tax resource mobilization constitutes the foundational material infrastructure for fulfilling economic, social, and cultural rights and the Right to Development;

(d) A holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects, recognizing that progressive tax resource mobilization is essential to protect the right to a clean, healthy, and sustainable environment and finance a globally Just Transition;

2. ARTICLE 4 (SUSTAINABLE DEVELOPMENT)

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. States Parties shall ensure that international tax rules enhance source-country fiscal capacity to mitigate environmental harms, fund climate adaptation, and implement environmental protections without legal impediment.

3. ARTICLE 5(1) (FAIR ALLOCATION OF TAXING RIGHTS)

1. A fair allocation of taxing rights among jurisdictions shall reflect the real economic contribution of each relevant jurisdiction, including jurisdictions where value is created, natural resources are extracted, environmental impacts occur, markets are located, revenues are generated, and users or data are located. For this purpose, multinational enterprises shall be evaluated as unitary economic entities, and taxing rights shall be apportioned based on objective formulary apportionment reflecting physical assets, natural resource extraction, employment, sales, and user interaction.

4. ARTICLE 11(3)(c) (EXCHANGE OF INFORMATION)

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret. Provided that this subparagraph shall not be invoked to withhold anonymized or country-by-country financial reporting data necessary to detect tax-related illicit financial flows, profit shifting, or environmental tax liabilities.

5. NEW ARTICLE 11 BIS (MANDATORY CORPORATE TAX DUE DILIGENCE)

Article 11 bis

1. States Parties shall take legislative and regulatory measures to ensure that multinational enterprises operating within their jurisdiction conduct mandatory human rights and environmental tax due diligence.

2. Such due diligence shall require multinational enterprises to assess, prevent, and publicly disclose cross-border tax structures that foreseeably erode the fiscal capacity of host states to fulfill international human rights obligations and environmental protections.

6. ARTICLE 21(2)–(3) (RELATION WITH OTHER AGREEMENTS)

2. Where provisions of prior bilateral or multilateral agreements, including double taxation treaties, bilateral investment treaties, or stabilization clauses, conflict with the obligations of this Convention, international human rights law, or duties under international environmental law, the provisions of this Convention and human rights and environmental obligations shall prevail.

3. States Parties shall take immediate steps towards terminating, amending, or renegotiating existing international tax and investment agreements to ensure full alignment with the provisions and principles of this Convention.

Conclusion

International tax law cannot operate in isolation from public international law, human rights norms, and environmental obligations. The INC must ensure the convention establishes a coherent legal order where state fiscal capacity is protected against treaty conflict, corporate profit shifting, and information asymmetry. Incorporating human rights and environmental supremacy, ecological unitary taxation, corporate tax due diligence, and open data access will establish a legally sound, equitable international tax system capable of funding global development and climate resilience.