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**THE INTERNATIONAL TAX ORGANIZATION (ITO)
FOUNDATIONAL AGREEMENT. A proposal**



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Article Review

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KEYWORDS:

Foundational Agreement
of International Tax
Organization (ITO),
International tax
cooperation,
Global tax governance;
sustainable development.
Intergovernmental
commission on
international tax
Cooperation;
Multilateralism.

ABSTRACT:

This article includes a proposal for a Founding Agreement for the adoption of the new International Tax Organization, constituted under the following parameters: a) it is a **specialized** Public Law organization integrated into the United Nations system (art. 59 UN Charter); b) It is a **derived public** law international organization, whose powers are attributed to it by the States, subjects of primary law; c) It has **universal composition**, affecting all States in the world, governed by the rules of universality with representation of all States, and with a multipurpose vocation open to all countries in their capacity as possible Member States. d) It has an **intergovernmental** but not supranational character, since the States safeguard their state sovereignty.

It is adopted attending the provisions of A/C.2/77/L. 11/Rev.1 of the United Nations (Second Committee) and A/RES/77/441 of the Plenary of the United Nations General Assembly, both on effective and inclusive international tax cooperation within the United Nations, as well as, attending the global vacuum in an real international tax organization, such as the common institutional framework for international tax cooperation and governance relations, unlike the rest of the sectors in the world that do have an International Organization for the development and application of its functions, whether they are international organizations in the United Nations system, whether they are outside the United Nations.

In general terms, the purposes of this International Tax Organization (ITO) are the promotion and dialogue to achieve effective and inclusive international tax cooperation, the application of existing treaties and instruments in the aforementioned matters; as well as the negotiation and adoption of new treaties, recommendations and other instruments of international tax cooperation, in order to create a new architecture of global tax governance and cooperation relations.

PALABRAS CLAVES:

Acuerdo Fundacional de la
Organización
Internacional de Tributos
(ITO),
Cooperación tributaria
internacional,
Gobernanza tributaria
global; desarrollo
sostenible.
Comisión
Intergubernamental de
Cooperación tributaria
Internacional;
Multilateralismo

RESUMEN:

Este artículo incluye una propuesta Acuerdo fundacional por el cual se crea la nueva *International Tax Organización*, constituida bajo los siguientes parámetros: a) es un organismo especializado de Derecho Público integrado en el sistema de las Naciones Unidas (art. 59 de la Carta de Naciones Unidas); b) Es un organismo internacional de derecho público derivado, cuyas facultades le son atribuidas por los Estados, sujetos de derecho primario; c) Tiene composición universal, afectando a todos los Estados del mundo, y se rige por las reglas de la universalidad con representación del total de los estados y con vocación polivalente abierta a todos los países en su calidad de posibles estados miembros. d) Tiene carácter intergubernamental pero no supranacional, pues los Estados salvaguardan su soberanía estatal.

Su creación trae causa de lo establecido en la A/C.2/77/L. 11/Rev.1 de *Naciones Unidas (segunda Comisión)* y de la A/RES/77/441 del Pleno de la Asamblea General de las Naciones Unidas, ambas sobre cooperación tributaria internacional efectiva e inclusiva en el seno de las Naciones Unidas, amén del vacío mundial sobre una auténtica organización internacional en materia de tributación internacional, que constituya el marco institucional común para las relaciones de cooperación y gobernanza tributaria internacional, a diferencia del resto de sectores del mundo que sí disponen de una Organización internacional para el desarrollo y aplicación de sus funciones, ya sean organizaciones internacionales en la familia de las Naciones Unidas, ya sean fuera de las Naciones Unidas.

Con caractère general, los fines de esta Organización Tributaria Internacional (ITO) son la promoción y el diálogo para lograr una cooperación tributaria internacional efectiva e inclusiva, la aplicación de los tratados e instrumentos existentes en las materias referidas y conexas; así como la negociación y adopción de nuevos tratados, recomendaciones y otros instrumentos de cooperación tributaria internacional, en aras a la creación de una nueva arquitectura de las relaciones de cooperación y gobernanza tributaria global.

MOTS CLES :

ACCORD FONDATEUR DE
L'ORGANISATION FISCALE
INTERNATIONALE (ITO),
COOPERATION FISCALE
INTERNATIONALE,
GOUVERNANCE FISCALE
MONDIALE ; LE
DEVELOPPEMENT
DURABLE.
COMMISSION
INTERGOUVERNEMENTALE
DE COOPERATION FISCALE
INTERNATIONALE,
MULTILATERALISME

RESUME :

Cet article comprend une proposition d'accord fondateur pour l'adoption de la nouvelle Organisation fiscale internationale, constituée selon les paramètres suivants : a) il s'agit d'une organisation spécialisée de droit public intégrée au système des Nations Unies (art. 59 Charte des Nations Unies) ; b) Il s'agit d'une organisation internationale de droit public dérivé, dont les pouvoirs lui sont attribués par les Etats, sujets de droit primaire ; c) Elle est de composition universelle, touchant tous les Etats du monde, régie par les règles de l'universalité avec représentation de tous les Etats, et à vocation polyvalente ouverte à tous les pays en leur qualité d'Etats membres possibles. d) Elle a un caractère intergouvernemental mais non supranational, puisque les États sauvegardent leur souveraineté étatique.

Il est adopté conformément aux dispositions du document A/C.2/77/L.11/Rev.1 des Nations Unies (Deuxième Commission) et A/RES/77/441 de la Plénière de l'Assemblée générale des Nations Unies, tous deux sur une coopération fiscale internationale efficace et inclusive au sein des Nations Unies, ainsi que la participation à la vide mondial dans une véritable organisation fiscale internationale, comme le cadre institutionnel commun pour la coopération fiscale internationale et les relations de gouvernance, contrairement au reste des secteurs dans le monde qui disposent d'une organisation internationale pour le développement et l'application de ses fonctions, qu'ils soient organisations internationales du système des Nations Unies, qu'elles soient extérieures au système des Nations Unies.

De manière générale, les objectifs de cette Organisation Fiscale Internationale (OIC) sont la promotion et le dialogue pour parvenir à une coopération fiscale internationale efficace et inclusive, l'application des traités et instruments existants dans les domaines susmentionnés ; ainsi que la négociation et l'adoption de nouveaux traités, recommandations et autres instruments de coopération fiscale internationale, afin de créer une nouvelle architecture de gouvernance fiscale mondiale et de relations de coopération.

The International Tax Organization (ITO) Foundational Agreement. A proposal.

The parties to this Agreement,

Attending to the United Nations Resolution A/RES/77/441 in relation to the adoption of necessary measures for the creation of a special open-ended intergovernmental committee led by the States to enhance effective and inclusive international tax cooperation within the framework of the United Nations.

Recognizing that the adoption of a new International Tax Organization is a tax crucial policy to establish the appropriate framework to develop international tax cooperation relations in an effective and inclusive manner, under the resolutions of the United Nations A/C.2/77/L.11/Rev.1 of the Second Commission of the General Assembly (23th November, 2022) and A/RES/77/441 of the General Assembly (30th December, 2022), both regarding the promotion of effective and inclusive international tax cooperation within the framework of the United Nations, as well as the report A/78/235 of the Secretary-General of the United Nations (26th July, 2023).

Recognizing the need to create an authentic International Tax Organization, a specialized agency of the United Nations (art. 59 UN Charter), in a manner analogous to the rest of the world sectors where authentic International Organizations have been created for the adoption and application of its rules and instruments.

Recognizing that international tax cooperation, together with domestic resource mobilization and good international tax governance, are a source of financing sustainable development (in line with the Addis Ababa and 2030 UN Agendas, Monterrey Consensus and Doha Declaration), optimal to achieve a higher level of quality of life, an increase in GDP, an increase in aggregate demand-supply and aggregate income, a reduction in poverty, and seeking to preserve the environment with environmental tax policies according to needs environmental taxes of interests of the different countries.

Recognizing the need to make significant efforts for developing countries to maximize their possibilities for development and improvement of the quality of life through effective and inclusive international tax cooperation that considers the interests of all states and that neutralizes the international movement of illicit financial capital.

Desiring to contribute to the achievement of these objectives through the negotiation and conclusion of international tax cooperation and governance treaties of a multinational and plurinational nature (not only), which allow removing obstacles to achieving international tax cooperation in the global economic-social sphere and assist in the application of existing multilateral treaties and instruments regarding international tax cooperation.

Resolved to create a new specific and lasting global organization belonging to the United Nations family, with ties of collaboration open to other international organizations and stakeholders of the new multilateralism, and that allows progress towards a new architecture of tax cooperation and governance relations with international efforts aimed at achieving a new Global Tax Order.

Resolved to preserve the fundamental principles and sources of international taxation and international economic law, including hard law and soft related laws on global tax cooperation and governance,

They agree to the following:

Article I
Establishment of the International Tax Organization

The International Tax Organization (hereinafter referred to as ITO) is established by this agreement.

Article II
Purpose of the International Tax Organization

1. The purpose of the ITO is to promote and develop inclusive and effective international tax cooperation, through its bodies led by Member States.
2. The ITO is a derived international public law organization that constitutes the common multilateral institutional framework for the development of international tax cooperation relations between its primary members, the States and other international law subjects.

Article III
Constitution of the International Tax Organization

1. The ITO is formally established as a new international organization of derived public law, with specific functional powers attributed by the States, and integrated into the United Nations system.
2. The States are the subjects of primary public law, who are assigned the original or natural powers for the creation of the ITO, which is constituted as a subject of derived public law, with functional powers attributed by the States that create it.
3. The ITO is a derived public law organization, with specific purposes, and it will be established such as a new specialized agency according to article 59 of United Nations Charter,¹ in line with the purposes set forth in United Nations Charter Article 55.²
4. In relation to the creation of the new ITO, the present founding agreement must be adopted by the General Assembly of the United Nations.
5. The configuration of the ITO responds to a type of international organization with universal composition and universal vocation, since it affects all States, created through this founding agreement. It is governed by the rules of universality with representation of all States and with a multipurpose vocation open to all countries in their capacity as possible member states (and not of a regional nature directed only at some countries or regions).

¹ Article 59. The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55 (Charter of the United Nations).

² Article 55. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Charter of the United Nations).

6. Other subjects of derived public law, such as international organizations, related associations, academia, representatives of the international business world, society, etc., will also participate in the ITO, with voice and without vote.
7. The ITO is an international organization of an intergovernmental nature, but not of supranational integration, which means that the States come together to exercise the common functions provided for in this founding agreement but saving their state sovereignty.

Article IV **Scope of the International Tax Organization**

The ITO will constitute the common institutional framework for the development of international tax cooperation relations between its members, in relation to:

1. The **promotion and development of international tax dialogue and cooperation** between States, in collaboration with derivative or secondary public law subjects involved in such matters.
2. The **application** of existing treaties and instruments on international tax cooperation and related issues, such as the application of existing rules on dispute settlement in international tax cooperation, among others.
3. The **negotiation and adoption** of new treaties, recommendations, and other instruments on international tax cooperation and also those that are projected in the broader scope of international tax governance, related to international tax cooperation, for instance, and in particular the creation and application of rules/procedures and measures for the elimination of international tax fraud and illicit capital movements, in terms of conflict resolution, etc.

Article V **Functions of the International Tax Organization**

1. The ITO will facilitate the administration and operation of **this founding agreement** by which the ITO is created.
2. The ITO will facilitate the negotiation, adoption, administration and operation of **a new multilateral treaty or treaties**³, as well as plurilateral treaties, on international tax cooperation applicable to the parties that sign and ratify it/them. In addition, it will ensure the monitoring and evaluation of the implementation of said treaties.
3. The ITO will facilitate the negotiation, adoption, administration, and operation of the **protocols for the development** of multilateral agreements and/or conventions on international tax cooperation.⁴

³ In any of the modalities considered. Namely: Multilateral Convention, Framework Agreement, General Agreement, etc. (Report A/78/235 United Nations, 26th July 2023).

⁴ Report A/78/235 United Nations General Secretary (26th July 2023); RES. A/C.2/77/L.11/Rev.1 of the second committee of the General Assembly (23th November, 2022); RES. A/RES/77/441 of the United Nations General Assembly (30th December 2022).

4. The ITO constitutes a forum to provide support to its members in the negotiation of possible **bilateral treaties** on international tax cooperation.
5. The ITO is a forum that facilitates the application of existing **treaties, instruments and standards on international tax cooperation**.
6. The ITO will establish the **rules for functioning** of its powers and also the structure of its various bodies, councils and committees.
7. The ITO also has among its functions the **preparation of recommendations** for its member States on international tax cooperation and related issues, as well as reports or opinions that are required.
8. The ITO will publish results reports annually, with the reports and all types of documents necessary for the interest of international tax cooperation.
9. The ITO may optionally make arrangements for **consultation** and cooperation with other non-governmental organizations for related purposes.
10. The ITO will promote cooperation policies for the development of less consolidated countries based on their economic, technological, tax and administrative capabilities, providing assistance and advisory functions.
11. The ITO will promote all types of global policies to facilitate the functions of international tax cooperation, such as a Tax system Administration 3.0, compatible computer and database systems for the purposes of data exchange and relevant tax information, global policies to address gaps, overlaps, and challenges that exist to carry out efficient and effective tax cooperation.

Article VI **Relations with other organizations**

1. The ITO will maintain functional relations with the United Nations Organization⁵, such as, for example, with the Committees of the United Nations General Assembly, in particular the Second Committee (Economic and Financial) and the Sixth Committee (Legal), the ECOSOC, the Secretariat of the United Nations and the International Tax Cooperation Committee⁶. The ITO will also maintain relations especially with the United Nations agencies and commissions in charge of developing the Addis Ababa Agenda in terms of financing sustainable development as FACTI Panel, Task Force Agency, etc.
2. The ITO will address the global framework of international economic policies, among its functions being cooperation with other international organizations such as the International Monetary Fund, the World Bank, or other international organizations not belonging to the UN

⁵ According to Article 57.1 of the UN Charter: The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

⁶ Unless it is decided to integrate said committee into the broader framework of the ITO.

such as the OECD, the PME, the platform for international tax cooperation, etc., as well as international associations with competences in international tax cooperation.

3. The ITO may maintain contacts and cooperation with other international entities or groups such as the G-20, G-7, G-77, or others, for the purposes of carrying out its functions.

Article VII

Legal personality

1. The ITO is configured as a subject of international law with its own legal personality.
2. Given that the ITO is not a sovereign but derived public law subject, its legal personality is affected by the principle of specialty, which means that it is subject to the objectives and functions attributed to it by this founding agreement.
3. The members of the ITO will confer the necessary legal capacity:
 - a) To the ITO itself for the performance of its functions.
 - b) To the officials of the ITO and the representatives of the members, who - for these purposes - will enjoy the privileges and immunities necessary for the exercise of their functions in relation to the ITO. Such privileges and immunities shall be in accordance with the privileges and immunities established in the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on November 21th, 1947.
 - c) It is also anticipated that the ITO may enter into a specific agreement in relation to the headquarters.⁷

Article VIII

Structure of the International Tax Organization

The International Tax Organization is formed under the following structure:

1. General Council
2. Secretariat
3. Sectoral committees
4. Committee on Budgetary, Financial and Administrative Affairs

Article IX

The General Council of the International Tax Organization

1. The General Council of the ITO is the plenary intergovernmental political body that deals with all the matters carried out by the ITO.

⁷ We could suggest such as physical headquarters, for feasibility reasons, those locations where the United Nations have their main headquarters, such as New York, Geneva and Vienna. Other desirable alternative locations could be, by order of preference: Africa (Cape Town, Nairobi...); Latin America (Santiago de Chile, Mexico City...); or Europe (Barcelona, Rome, ...).

2. The General Council of the ITO is composed of representatives of all member states. Each member of the General Council shall have one vote.
3. The General Council of the ITO will perform the following functions:
 - a) Organization of annual plenary sessions to discuss the affairs of the Organization.
 - b) Approval of standards and resolutions within the framework of its powers according to the standards established for the adoption of agreements.
 - c) Establishment of ITO procedural rules including the financial and budgetary sources for its constitution and functionality.
 - d) Approval of the Sectoral Committees provided for in Article XI. Within the sectoral committees, in particular the dispute settlement committees and also the committee against international tax fraud and illicit capital movements, they may have their own director, without prejudice to the fact that there may also be other directors of other sectoral committees, if this is determined by the General Council.

Article X

Secretariat

1. The ITO provides for the creation of a Secretariat (administrative body) of the organization itself headed by a General Director.
2. The General Council will appoint the General Director (secretary at the head of the general secretariat), who will carry out the functions of managing and administering the ITO on a daily basis, as well as functions of help, assistance and support to the member states.
3. The general council will approve a regulation that establishes the conditions, powers, duties, conditions of service and the duration of the mandate of the General Director.
4. The General Director will appoint the staff of the Secretariat and determine their duties and conditions of service according to the regulations adopted by the General Council itself.
5. The functions of the General Director and the staff of the Secretariat will be of an international nature, without accepting instructions from any government or any other authority outside the ITO and they will refrain from carrying out any other act that may be incompatible with their status as officials.

Article XI

Sectoral Committees

1. The General Council of the ITO will constitute the specific sectoral committees (expert bodies) related to international tax cooperation and governance, which will operate under the general guidance of said General Council. Its functions will be to carry out fiscal tax policies, proposals, recommendations on the matters covered by this organization, as well as to provide assistance to member states.
2. The following sectoral councils will be established, composed of expert commissions of internationally qualified and recognized expert members, appointed by the States, in the following matters:

- A. **Sectoral Committee for legal affairs** (legal commission) on agreements to avoid international double taxation, administrative cooperation agreements on tax matters and mutual assistance, and issues related to international tax cooperation.
- B. Sectoral Committee for International Tax Cooperation to combat **international tax fraud** and illicit capital movements.
- C. Sectoral Committee for International Tax Cooperation and **Digital Economy, Artificial Intelligence and Cybersecurity.**
- D. Sectoral Committee for International Tax Cooperation and **environmental taxation.**
- E. Sectoral Committee for International Tax Cooperation and **Gender.**
- F. Sectoral Committee for International Tax Cooperation and **Conflict Resolution Systems.**
- G. Sectoral Committee for International Tax Cooperation, **Tax Compliance and Tax Education.**
- H. Sectoral Committee for International Tax Cooperation and **Health.**
- I. Sectoral Committee for International Tax Cooperation and **capacity building.**
- J. Sectoral Committee for International Tax Cooperation for the financing of Sustainable development and implementation of the International Agendas of sustainable development objectives and international development financing.
- K. Any other committee that may be established by the General Council.

Article XII

Committee on Budgetary, Financial and Administrative Affairs

1. The General Council will appoint a budgetary, financial and administrative affairs committee.
2. The General Director (of the Secretariat of the ITO) will present to the budgetary, financial and administrative affairs committee the draft budget, annual accounts and annual financial statement of the ITO.
3. The budgetary, financial and administrative affairs committee will evaluate the aforementioned project on the budget, annual accounts and financial statement, and may either give approval or, where appropriate, include recommendations in its formulation, which will subsequently be passed to the General Council.
4. The budgetary, financial and administrative affairs committee is the body in charge of preparing financial regulations, which must be reported to the General Council.
5. The financial regulations prepared by the budgetary, financial and administrative affairs committee must include:
 - a) Issues related to the budget and balance sheets of the ITO.
 - b) Issues relating to the scale of contributions and weighted allocation of expenses of the ITO to its members.
 - c) Issues related to salary remuneration, arrears, deferred payments, credit advances, etc.
6. The financial regulations and the annual budget project prepared by the budgetary, financial and administrative affairs committee must be approved by the General Council, following the same rules established for general decision-making of the ITO in Article XIII.

7. The members of the ITO will contribute to the common budget of the organization itself in the part corresponding to the expenses prorated among its members, the conditions of which will be established in the financial regulations that must be approved by the General Council.

Article XIII

Decision making

1. In general, decisions within the ITO will be made by consensus among its members.
2. In the event that there is no consensus, decisions will be made by a qualified majority of two-thirds of the ITO members present and voting.
3. The treaties adopted by the ITO will bind all countries that have ratified or accepted them in accordance with their respective constitutional processes.

Article XIV

Miscellaneous provisions

* Other usual miscellaneous provisions in all international treaties (such as on signature and ratification, deposit, entry into force, registration, authentic versions, adhesions, amendments...) will be detailed in the definitive adopted version.

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