

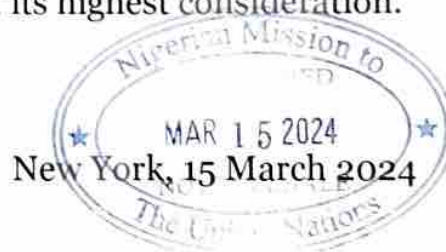


Note No: 374/2024

The Permanent Mission of the Federal Republic of Nigeria, on behalf of the African Group, presents its compliments to the United Nations Department of Economic and Social Affairs (UN-DESA) and has the honour to refer to the invitation extended by the Chair of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. This invitation calls for Member States and other stakeholders to provide substantive inputs to the Committee's work, particularly for its first substantive session scheduled for 26 April to 8 May 2024 in New York.

In light of the foregoing, the Permanent Mission of Nigeria, wishes to forward the Group's inputs attached herewith, for the draft Terms of Reference for the UN Framework Convention on International Tax Cooperation.

The Permanent Mission of the Federal Republic of Nigeria avails itself of this opportunity to renew to the United Nations Department of Economic and Social Affairs, the assurances of its highest consideration.



**United Nations Department  
of Economic and Social Affairs  
(UNDESA)**

**The Chairman,**

Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation,  
United Nations Headquarters,  
New York,  
USA,

Sir,

**Re - Call for Inputs into the Draft Terms of Reference for the UN Framework Convention on International Tax Cooperation**

**General Comments**

1. It is no secret that the main problem of international taxation has long been attributed to the absence of inclusive and efficient governance framework. As such, the success of the current assignment and of the Convention will determine a wide array of outcomes including entrenching a fair, equitable, transparent, inclusive and effective international tax cooperation architecture which would help in negotiating rules that solve perennial issues facing the continent such as historical imbalance in taxing rights, Illicit Financial Flows (IFFs), aggressive tax planning, tax evasion, Base Erosion and Profit Shifting as well as other factors militating against the effort of developing countries in Domestic Revenue mobilization. Such a system will enhance the ability of many nations to raise sufficient revenue to wean themselves of crushing national debts, provide basic and life-saving amenities to their people, fight poverty and diseases and fund Sustainable Development Goals.

**Inputs into the ToR**

2. Considering your call for inputs into the ToR and your question: "What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?", the African Group are making the underlisted input which we firmly believe will guarantee a robust framework convention on international tax cooperation that meets the set objective. It is also our understanding that our input, when analyzed, falls into your framing of structural, procedural as well as elements relating to the possible simultaneous development of early protocol. They are as follows –

### **Provisions Relating to the Framework Drafting Committee:**

3. This segment of the ToR should set out the process, procedure and considerations to govern the Convention Drafting Committee.<sup>1</sup> In addition to the above, as a general guide, the convention drafting committee must be required, in elaboration of the text of the convention to take into account –
  - a. the needs, priorities and capacities of all countries, in particular developing countries.
  - b. a holistic, sustainable development perspective that considers interactions with other important policy areas.
  - c. the need for sufficient flexibility and resilience in the international tax system to ensure equitable results as technology and business models and the international tax cooperation landscapes evolve.
  - d. Consider existing multilateral and international arrangements, leverage existing strengths, and address gaps and weaknesses in current international tax cooperation efforts and arrangements when developing the framework convention.
  - e. Establish a transparent, equitable, and practical basis for the allocation of tax rights across various jurisdictions. This new basis must consider the changes in the economy in recent decades and remain flexible enough to adapt to future developments.
  - f. Ensure that the design of the framework allows for sufficient flexibility in its operation so as to aid stability and resilience in the international tax system.
  - g. Set a reasonable time frame for completing the convention and related protocols to mitigate the negative impact of the current international tax system on developing countries.
  - h. That the Framework Convention is reflective of the need for inclusive and effective participation by all member states, especially developing countries, in agenda setting, rulemaking, standard setting and negotiation of protocols.
  - i. Ensure that the convention is reflective of commitments expressed by member states in Resolutions:
    1. 78/230 of 22 December 2023 on “Promotion of inclusive and effective international tax cooperation at the United Nations.”
    2. 77/244 of 30 December 2022, which called for intergovernmental discussions on ways to strengthen the inclusiveness and effectiveness of international tax cooperation, taking into consideration existing international and multilateral arrangements.
    3. 69/313 of 27 July 2015 (the Addis Ababa Action Agenda of the Third International Conference on Financing for Development), in which Member States committed to scaling up international tax cooperation and improving the tax system as a key element in

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<sup>1</sup> The current ad hoc intergovernmental committee is tasked with the development of the ToR only. This implies that after the consideration of the report of the committee by UNGA in its 79<sup>th</sup> Session (see Article 9 of resolution 78/230), it may mandate the same committee or constitute new ad committee to elaborate the text of the convention.

- raising funds to finance sustainable development goals.
4. Such other resolution of the United Nations embodying commitments relevant to the current assignment.

#### **Auxiliary Provisions**

4. The ToR should include a mandate for the Convention drafting committee to elaborate auxiliary articles for the Convention. These articles, in no particular order, include Preambles, Definitions, Objectives, Principles, Voting, Amendment procedure, Dispute resolution clauses, transitional provisions, Depository, Signature, ratification, accession, entry into force, etc.

#### **Institutional Arrangements**

5. The committee should elaborate the convention to establish a Framework with the following:
  - a) *Structure* – the framework should have a Conference of Parties (CoP), a technical secretariat and ad hoc technical working groups (TWG) to be established by the CoP on need basis, following a recommendation by the secretariat. The CoP should also have powers to establish any other auxiliary body as may become necessary for the realization of the object of the Convention. The United Nations Tax Committee (UNTC) members may be constituted into an advisory body to the Secretariat with a mandate to supervise, on behalf of the CoP, the technical work of the Secretariat.
  - b) *Functions* – the function of the Framework must be broad enough to cover all existing and emerging issues of international taxation.<sup>2</sup>
  - c) *Administration* – the convention must set out process and procedure for the general administration of the Framework including but not limited to the relationship between the organs of the framework, the framework and other organs of the UN and how the Framework will relate to stakeholders including national and regional organizations like Tax Administrations, ATAF, WATAF, OECD, PTLAC, CSOs and IGOs.
  - d) *Legacy Issues*: the convention should provide the treatment, by the Framework, of the existing instruments, rules or standards developed by the existing platforms as well as the relationship with the platforms themselves.<sup>3</sup>

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<sup>2</sup> See paragraph 6(c) of Resolution 78/230 [the Committee in elaborating the ToR should consider the need for sufficient flexibility and resilience in the international tax system to ensure equitable results as technology and business models and the international tax cooperation landscapes evolve]

<sup>3</sup> See paragraph 6(d) of Resolution 78/230 [the Committee in elaborating the ToR should consider the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels]

## **Operational Clauses**

6. The ToR should task the Committee to elaborate the following clauses:

- a) *Commitments*:<sup>4</sup> this clause should outline a high-level commitment of parties, wherever possible, to key issues like –
  - i. Fair distribution of taxing rights
  - ii. Tax-related Illicit Financial flows (IFFs)
  - iii. Base Erosion and Profit Shifting
  - iv. Tax Transparency and exchange of information for tax purposes.
  - v. Harmful Tax Regimes
  - vi. Taxation of the digital economy
  - vii. Taxation of high-net-worth individuals
  - viii. Taxation of Cross-border Services
  - ix. Mutual administrative assistance
  - x. Technical cooperation with respect to exchange of expertise and best practices
  - xi. Commitment to specific treatment of developing countries.<sup>5</sup>
  - xii. Etc
  
- b) *Obligations*: clauses should be elaborated placing specific obligations on parties to adhere to certain standards, principles, or rules outlined in the Convention.
- c) *Capacity-building*: Support measures to assist parties, particularly developing countries, in building their capacity to implement the treaty effectively. This should also include technical cooperation in sharing expertise, best practices to enhance cooperation in international tax matters.
- d) *Financial arrangements*: Provisions related to funding mechanisms, contributions, and financial assistance to support the implementation of the Convention and the operation of the Framework.
- e) *Prohibitions*: Restrictions on specific activities or behaviors that parties are prohibited from engaging in under the Convention.
- f) *Special Considerations*: this may elaborate specific considerations for developing countries as mandated by resolution 78/230.<sup>6</sup>
- g) *Reporting and monitoring mechanisms*: Requirements for parties to submit regular reports, data, or updates on their implementation of obligations under the Convention, as well as provisions for monitoring compliance.
- h) *Enforcement mechanisms*: Procedures or measures for ensuring compliance with obligations under the Convention.

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<sup>4</sup> See paragraph 6(b) of Resolution 78/230 [*the Committee in elaborating the ToR should take a holistic, sustainable development perspective that considers interactions with other important economic, social and environmental policy areas*]

<sup>5</sup> See paragraph 6(a) of Resolution 78/230 [*The committee in elaborating the ToR should consider the needs, priorities and capacities of all countries, in particular developing countries*]

<sup>6</sup> See paragraph 6(a) of Resolution 78/230, *ibid.*

- i) *Review and amendment procedures*: Processes for reviewing the effectiveness of the Convention's provisions over time and mechanisms for amending or updating the Convention as necessary.

### **Consideration of Simultaneous Development of Early Protocols**

7. While acknowledging that the consideration of simultaneous development of early protocols was mandated by Resolution 78/230,<sup>7</sup> we submit as follows, that-
  - a) The consideration of this item by the drafting committee should end with the elaboration of a clause on "protocol" which must specify how protocols will be developed, negotiated, adopted and implemented, in the future, as part of the convention through the Framework.
  - b) The ToRs must specify a number of areas on which early protocols will be elaborated, a possible list of items to be considered may include items like:
    - i. Tax-related aspect of Illicit Financial flows (IFFs)
    - ii. Base Erosion and Profit Shifting
    - iii. Tax Transparency and exchange of information for tax purposes
    - iv. Harmful Tax Regimes
    - v. Taxation of the digital economy
    - vi. Taxation of high network individuals
    - vii. Taxation of Cross-border services
    - viii. Technical cooperation with respect to exchange of expertise and best practices
    - ix. Mutual administrative assistance
    - x. Taxation of Blockchain Technology
    - xi. Tax Treatment of Artificial Intelligence
    - xii. Etc.

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<sup>7</sup> See paragraph 6(e) of Resolution 78/230 [*The Committee in elaborating the ToR should consider simultaneously developing early protocols, while elaborating the framework convention, on specific priority issues, such as measures against tax - related illicit financial flows and the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy*]