



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

**RE: CALL FOR INPUTS INTO THE DRAFT TERMS OF REFERENCE FOR THE UN FRAMEWORK CONVENTION
ON INTERNATIONAL TAX COOPERATION**

General Comments

1. The African Tax Administration Forum (ATAF) congratulates the Chairman and his colleagues at the Bureau on their election as the Chair and Vice-Chairs of the ad hoc committee to elaborate the Terms of Reference (ToR) for a Framework Convention on International Tax Cooperation at the United Nations. The industry put in by your good selves, the members of the committee and all around the world striving to bring this process to this critical stage are deeply appreciated.
2. As you know, ATAF has been one of the organisations at the forefront of the call for entrenching an equitable, fair, inclusive, and efficient international tax cooperation framework. Our experience working in the interest of our members and Africa generally in existing platforms shows that such a framework would help solve perennial issues facing the continent, such as the 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 our members in mobilizing sufficient revenue for development domestically. It is for the above reason that we have supported the current workstream and hereby submit this input to the ToR to further the same.

3. This input may be read together with or in addition to the input submitted by the African Union, whose input we wholly adopt as though ours.

Towards a ToR for the UN Convention

4. In considering the question: "What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?" ATAF aligns itself with the view of the African Union and the African Group and restates that the ToR should have segments providing for, but not limited to, the following –

Provisions Relating to the Framework Drafting Committee:

5. This segment of the ToR should set out the process, procedure, and considerations for governing the Convention Drafting Committee.¹ In addition to the above, as a general guide, the Convention drafting committee must be required, in the elaboration of the text of the Convention, to take into account:
 - a. The needs, priorities and capacities of all countries, particularly developing countries.
 - b. A holistic, sustainable development perspective that considers interactions with other important economic, social and environmental 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. The work of other relevant forums, potential synergies, and the existing tools, strengths, expertise, and complementarities are available in the multiple institutions involved in tax cooperation at the international, regional, and local levels.²

¹ 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 79th 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.

² These clauses which were included in resolution 78/230 has been a good guide and should as well form part of the mandate of the incoming convention drafting committee.

Auxiliary Provisions

6. 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

7. The committee should elaborate on 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 a 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.³
 - 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.⁴

³ 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*]

⁴ 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

8. The ToR should task the committee to elaborate the following clauses:

- a) *Commitments*:⁵ 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. Environmental and Carbon taxation
 - iv. Base Erosion and Profit Shifting
 - v. Tax Transparency and exchange of information for tax purposes.
 - vi. Tax Incentives
 - vii. Taxation of the digital economy
 - viii. Taxation of high-net-worth individuals
 - ix. Taxation of Cross-border Services
 - x. Mutual administrative assistance
 - xi. Technical cooperation with respect to the exchange of expertise and best practices
 - xii. Commitment to specific treatment of developing countries.⁶
 - xiii. 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 and best practices to enhance cooperation in international tax matters.

⁵ 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*]

⁶ 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*]

- 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 behaviours 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 78/230.⁷
- 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.
- 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

9. While acknowledging that the consideration of simultaneous development of early protocols was mandated by Resolution 78/230,⁸ we submit as follows:
- a) Protocols to a Convention, as presently conceived, must necessarily be technical, setting out the detailed rules for the agreement or approval of parties. Detailed development of such protocol or rules is, therefore, a key rationale for the establishment of the Framework. As such, that function should not be carried out by the Convention drafting committee, who may lack the requisite time and resources for such a detailed development of substantive tax rules. It should be reserved for the Framework.
 - b) 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,

⁷ See paragraph 6(a) of Resolution 78/230, *ibid*.

⁸ 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*]

negotiated, adopted and implemented in the future as part of the Convention through the Framework.

c) The framework convention drafting committee may, in addition to paragraph b above, elucidate in the Convention a list of items to be considered by the Framework for development as early protocols. Such a list must be open-ended and may include items like:

- i. Tax-related aspects of Illicit Financial flows (IFFs)
- ii. Environmental and Carbon taxation
- iii. Base Erosion and Profit Shifting
- iv. Tax Transparency and exchange of information for tax purposes.
- v. Tax Incentives
- vi. Taxation of the digital economy
- vii. Taxation of high-net-worth individuals
- viii. Taxation of Cross-border taxation
- ix. Technical cooperation with respect to the exchange of expertise and best practices
- x. Mutual administrative assistance
- xi. Taxation of Blockchain Technology
- xii. Tax Treatment of Artificial Intelligence
- xiii. Etc.