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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. The African Union, on behalf of our Member States and allied organizations,¹ warmly welcome the election of the Chair and Vice-Chairs of the Ad Hoc Committee on the Terms of Reference for a UN Framework Convention on International Tax Cooperation. Your leadership will be instrumental in this critical undertaking. This Committee's work holds immense promise for shaping a more equitable and prosperous future for all nations, recognizing that the absence of a robust international tax governance framework has been a key challenge for domestic revenue mobilization and effective use for investment in productive transformation to achieve inclusive growth and sustainable development. We strongly believe that a successful Convention can pave the way for significant progress in this regard.
2. Suffice it to say that the success of the Framework Convention on International Tax Cooperation will draw significantly from the Terms of Reference set by this Committee that will become the foundation upon which the text of the Framework Convention will be constructed. It is therefore our hope that the Convention will Foster a fair, transparent, equitable and inclusive international tax cooperation framework and address longstanding issues such as the historical imbalances in taxing rights, Illicit

¹ These organizations include the African Tax Administration Forum (ATAF), Tax Justice Network Africa (TJNA), United Nations Economic Commission for Africa (UNECA), etc

Financial Flows, aggressive tax planning and other unfair tax practices. This, in turn, would empower our Member States to strengthen their domestic revenue mobilization efforts, unlock resources allowing nations to tackle debt, invest in essential productive infrastructures and services for their citizens, and accelerate progress towards the Sustainable Development Goals and Agenda 2063. We stand ready to collaborate with all parties involved to achieve this shared vision.

Towards a ToR for the UN Convention

3. In answering your question: *“What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”*, the AU, aligns itself to the view of the African Group and restates as follows –

Provisions Relating to the Framework Drafting Committee:

4. This segment of the ToR should set out the process, procedure and considerations to govern the Convention Drafting Committee.² 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 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 available in the multiple institutions involved in tax cooperation at the international, regional and local levels.³

Auxiliary Provisions

5. 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.

² 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 hoc committee to elaborate the text of the convention.

³ 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.

Institutional Arrangements

6. 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.⁴
 - c) *Administration* – the convention must set out the 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.⁵

Operational Clauses

7. The ToR should task the Committee to elaborate the following clauses:
 - a) *Commitments*:⁶ this clause should outline a high-level commitment of parties, wherever possible, to key issues like including –
 - 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

⁴ 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*]

⁵ 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*]

⁶ 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*]

- 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 exchange of expertise and best practices
 - xii. Commitment to specific treatment of developing countries.⁷
 - 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) *Principles*: Guiding principles outlined within the Convention will have the important function of providing room for the incorporation of diverse issues within the Framework and Protocols while preventing a situation in which the issues would contradict one another.
 - d) *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.
 - e) *Financial arrangements*: Provisions related to funding mechanisms, contributions, and financial assistance to support the implementation of the Convention and the operation of the Framework.
 - f) *Prohibitions*: Restrictions on specific activities or behaviors that parties are prohibited from engaging in under the Convention.
 - g) *Special Considerations*: this may elaborate specific considerations for developing countries as mandated by resolution 78/230.⁸
 - h) *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.
 - i) *Enforcement mechanisms*: Procedures or measures for ensuring compliance with obligations under the Convention.
 - j) *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

8. While acknowledging that the consideration of simultaneous development of early protocols was mandated by Resolution 78/230,⁹ we submit as follows, that-

⁷ 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*]

⁸ See paragraph 6(a) of Resolution 78/230, *ibid*.

⁹ 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*]

- a) The mandate by resolution 78/230 to consider simultaneous development of early protocols does not amount to a mandate to commence development of early protocol by the Convention drafting Committee.
- b) 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.
- c) 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.
- d) The Framework Convention drafting Committee may in addition to paragraph c above, elucidate in the Convention a list of items to be considered by the Framework for development as early protocols. Such list must be open ended and may include items like:
 - i. Tax-related aspect 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 and wealth taxation
 - viii. Cross-border Taxation
 - ix. Technical cooperation with respect to exchange of expertise and best practices
 - x. Taxation of Blockchain Technology
 - xi. Tax Treatment of Artificial Intelligence
 - xii. Taxation of international transport
 - xiii. Capital Gains and Indirect Transfer of Assets
 - xiv. Broader principles on cooperative domestic taxation systems.
 - xv. Etc.

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]