

# Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

## Written Input from CANZ for First Substantive Session

Australia, Canada and New Zealand respectfully proposes to the Ad Hoc Committee that the terms of reference for a United Nations Framework Convention on International Tax Cooperation include the following:

### **1. Preamble**

The terms of reference should include a preamble stating the broad objectives and principles that should guide the negotiation of the Framework Convention. In particular, we propose that the preamble include the following clauses:

- “*Recognizing* the desire of a majority of Member States to negotiate a Framework Convention on international tax cooperation;”
- “*Recognizing* that the process of negotiating the Framework Convention should be inclusive and transparent;”
- “*Recognizing* the importance of seeking consensus on substantive matters in support of the broad and effective implementation of the Framework Convention;”
- “*Recognizing* the need to seek synergies and ensure coherence with existing institutions, organizations, instruments and arrangements that compose the international tax system so as to avoid duplication and maintain the effectiveness of the system;”

### **2. Objectives and scope of the Framework Convention**

Consideration should be given to including in the terms of reference some indications as to the objectives and desired scope of the Framework Convention. This would be useful to provide guidance and directions for the negotiation of the Framework Convention, recognizing however that such guidance and directions would not be binding on the parties negotiating the Framework Convention.

We believe that the objective of the Framework Convention should be to support greater international tax cooperation by ensuring the inclusiveness and effectiveness of multilateral tax policy discussions and establishing general principles to guide these discussions.

As for its scope, we believe that the Framework Convention could allow for the development of best practices and non-binding standards on issues relevant to domestic resource mobilization and other relevant issues, but that new binding standards under the Framework Convention should not be developed in respect of purely domestic tax policy issues. Binding coordination arrangements at the

international level should be used exclusively where international coordination is necessary, e.g., cross-border issues. We also believe that customs tariffs and duties on imported and exported goods should be specifically excluded from the scope of the Framework Convention. Customs tariffs and duties relate primarily to trade policy and are typically not considered taxes; as such, they are dealt with in separate agreements and by other organizations such as the World Trade Organization.

Also, to ensure the effectiveness of the standards to be negotiated under the Framework Convention, we believe it would be useful to stipulate conditions that an issue would need to meet to be in-scope of the Framework Convention. Such conditions could include:

- Addressing this issue requires coordination among a large number of States and would benefit those States;
- The issue could best be addressed by way of either non-binding standards, or binding obligations, under this Framework Convention;
- Other multilateral instruments or arrangements do not exist that address the same issue.

### ***3. List of provisions to be included in the Framework Convention***

The terms of reference should list the provisions that could be included in the Framework Convention and that are to be the object of the negotiations. Such a list should be indicative only and should not limit the capacity of the parties to negotiate additional or different provisions.

In order to support the broad adoption of the Framework Convention, binding commitments relative to substantive tax matters should be set out in protocols rather than in the Framework Convention itself. This would provide more flexibility for jurisdictions to assess their interest in participating in any particular protocol.

### ***4. Modalities for the negotiation of the Framework Convention***

The terms of reference should decide or request the following:

- That a Member State-led, open-ended ad hoc intergovernmental committee (hereafter “the Committee”) be established with the mandate of negotiating a Framework Convention on international tax cooperation;
- That the Committee shall convene in [New York] for up to [10] working days at a time, within available time frames, and shall hold its organizational session as soon as possible and no later than [date];
- That the Committee remain in existence until the completion of its mandate;
- That the bureau of the Committee shall be made up of not more than 20 members, consisting of a chair, vice-chairs and a rapporteur, elected on the basis of balanced geographical representation and taking into account gender balance, with each of the five regional groups equally represented;

- That international organizations and civil society should be allowed to contribute to the work of the Committee, in accordance with established practice and with no decisional powers or rights to vote;
- That an independent secretariat be established to support the work of the Committee;
- That the Secretary-General allocate the necessary resources to support the work of the Committee and its secretariat;
- That the Committee shall make every effort to reach agreement on substantive matters by way of consensus, there shall be no voting on such matters until all efforts at consensus have been exhausted, and if there is a vote on substantive matters after all efforts at consensus have been exhausted, then such a vote shall require a two-thirds majority of representatives present and voting.

In addition, consideration could be given to the terms of reference establishing the order in which to negotiate the provisions of the Framework Convention, so as to facilitate and streamline the conduct of the negotiations.

### ***5. Rules for adoption of the Framework Convention***

Though also not binding on the parties that will negotiate the Framework Convention, the terms of reference should stipulate that the adoption of the Framework Convention shall not be adopted by a vote until all efforts at consensus have been exhausted and the Chair, upon a decision of the Bureau, has informed the Committee that all such efforts have been exhausted. If the Framework Convention is then adopted by a vote, such a vote shall require a two-thirds majority of representatives present and voting. Seeking the broadest possible consensus on the text of the Framework Convention is essential to support its adoption and implementation, and thereby its inclusiveness and effectiveness. Parties will not adhere to a convention unless it reflects a reasonable balancing of interests; while achieving consensus among competing interests is challenging, it is essential for developing standards that will actually be implemented.

### ***6. Negotiation of future protocols***

Resolution 78/230 requested that the Ad Hoc Committee, in elaborating the draft terms of reference, “consider simultaneously developing early protocols, while elaborating the framework convention, on specific priority issues”. We propose that the terms of reference state that (as proposed in section 4 above) the mandate of the Committee shall be limited to negotiating the Framework Convention, leaving the negotiation of protocols under the Framework Convention to the Conference of the Parties to be established under the Framework Convention. Developing protocols while the design and substance of the Framework Convention are being negotiated would not be appropriate as the conceptual and institutional frameworks that are to be established under the Framework Convention will not yet have been adopted. States with more limited resources may also find it challenging to participate in multiple negotiations at once.

## **7. List of issues for potential future protocols**

The terms of reference could include a list of issues for potential future protocols, specifying that this list is indicative only and non-binding on the Committee or the Conference of Parties to be established under the Framework Convention.

## **8. List of research and analysis to be undertaken in support of the negotiations**

The terms of reference should request that the Committee arrange for research and analysis to be undertaken in support of the negotiation of the Framework Convention and underlying future protocols. Such research and analysis should go further than the July 2023 Secretary-General report and comprehensively document the state of existing international tax cooperation initiatives and gaps that may exist in that respect. It should also explore more comprehensively the options that are available to countries to improve domestic resource mobilization. It should be conducted by individuals and organizations with the proper technical expertise and adequate resources to carry out this research and analysis, and States participating in the negotiation of the Framework Convention should be given the opportunity to review and comment on the research outputs before finalization and publication.

We propose that research and analysis be undertaken on the following questions:

- What are the key principles underlying existing international tax cooperation? What additional or alternative principles could be considered?
- What international tax cooperation arrangements and instruments currently exist? What is the scope and legal nature of these instruments and when were they adopted? Which states and jurisdictions are parties to these arrangements and instruments? How effective are these arrangements and instruments in terms of governing international tax policy relationships, and do they give rise to specific issues or problems? What gaps exist relative to these arrangements and instruments in terms of their scope and take-up?
- What institutions and organizations currently play a role in international tax cooperation? What is the mandate of these institutions and organizations, what roles do they play and in which areas of international tax policy? What is the membership of these institutions and organizations? What is the output of these institutions and organizations in relation to international tax policy?
- What tax policies, domestic or cross-border, could be pursued by developing countries to improve domestic resources mobilization? Which of these policies would be the most effective and efficient for countries to implement that would achieve a fair taxation burden (that is, avoid excessive or double taxation)? Which of these policies could be implemented unilaterally, without a need for a multilateral agreement and/or changes to existing bilateral agreements?
- What funding mechanisms exist that can be used to finance global policy initiatives? What are the relative advantages and disadvantages of these mechanisms, including in terms of funding potential and difficulty of implementation and administration?

- What mechanisms exist for the collection of tax statistics and data, and what gaps exist in that respect?