

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

## **General Comments**

1. Congratulations to the Chair and Vice-Chairs of the ad hoc committee tasked with elaborating the Terms of Reference (ToR) for a Framework Convention on International Tax Cooperation at the UN. We commend the dedication and expertise demonstrated thus far in this crucial endeavour, recognising its profound implications for the whole world, present and future generations alike.
2. The action of the African Group initiating this process intended to create fair, equitable, transparent and inclusive platform for international tax at the United Nations is commendable. The proposed UN platform will certainly promote universally acceptable tax rules, and help to resolve lingering tax issues such as imbalance in taxing rights, Illicit Financial Flows (IFFs), aggressive tax planning, tax waivers & incentives, BEPS issues, etc.
3. Guided by the question: "*What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?*", and considering the call for inputs on structural and procedural elements of the convention, find below outline of issues that may be included and addressed in the terms of reference –

## **Guidrails for the Framework Drafting Committee:**

4. The ToR should lay the guardrails for the Committee to elaborate the text of the convention. Such effort should include provisions regarding the way and manner the Committee is to carry out its assignment including the need to build agile, resilience and sustainable governance platform. In doing so, the needs, priorities and capacities of all countries, particularly those of developing countries must be considered. The interaction of the platform with other economic and social issues (the SDGs), and the works of other platforms (e.g., the United Nations tax Committee, the OECD, etc.) must be covered.

## **Operative Framework**

5. The ToR should also mandate the Convention drafting committee to elaborate all such provisions that forms an efficient operative framework. These include, but are not limited to, Preambles, Definitions, Objectives, Principles, Organs, Voting, Dispute resolution, Transitional provisions, Reviews or Updates, Depository, Signature, Ratification, Accession, Entry into force, etc.

## **Building the Framework**

6. The primary object of a framework convention is to establish a working "framework" for a system or regime. To this end, we propose that the convention should include:
  - a) a structure comprising a technical secretariat, technical working groups (TWGs), a technical coordinating or steering body to superintend over the work of the Secretariat and TWGs on behalf of the supreme organ (this can be the United Nations Tax Committee), and a supreme organ e.g., a Conference of Parties (CoP) or ECOSOC;

- b) broad functions for the organs: broad enough to encompass existing and emerging international taxation issues;
- c) clear administrative procedures governing the relationship among the organs, and their interaction with other UN entities as well as stakeholders such as national or regional organisations, CSOs, and IGOs; and
- d) guidelines for addressing legacy issues and existing instruments, rules, or standards.

### **Operational Elements**

- 7. The ToR should task the Committee to elaborate clauses –
  - a) requiring high level commitment of parties, wherever possible, on issues like, Illicit Financial flows (IFFs), Environmental and Carbon taxation, Base Erosion and Profit Shifting, Tax Transparency and exchange of information for tax purposes, Tax Incentives, Taxation of the digital economy, Taxation of high network individuals, technical cooperation with respect to exchange of expertise and best practices, Commitment to specific issues of developing countries, etc. which commitments should not dispense the need for a detailed protocol on any of the above items in the future.
  - b) placing specific obligations on parties to adhere to standards, principles, or rules outlined in the Convention or protocols. The items to which such obligation may arise include Capacity-building, financial arrangements, Reporting and monitoring, considerations for developing economies and Restrictions on specific activities or behaviours that parties are prohibited from engaging in under the Convention.

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

- 8. The ToR should task the Convention Drafting Committee to:
  - a) elaboration, in the Convention, a clause on “protocol” which must specify how protocols will be developed, negotiated, adopted and implemented, in the future, through the Framework.
  - b) reserve the development of protocols to the Framework once constituted.
  - c) elucidate in the convention a list of items to be prioritized by the Framework for development as early protocols. Such list must be open ended and may include IFFs/BEPS, Tax Waivers and Incentives, Environmental and Carbon taxation, Tax Treaty, Transparency/EoI, Tax Dispute Prevention and Resolution, Taxation of the digital economy, Taxation of high network individuals, cross-border taxation generally, technical cooperation with respect to exchange of expertise and best practices, etc.

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