

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

Guernsey welcomes the opportunity to provide input to the Ad Hoc Committee to aid its deliberations as it prepares the Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. In particular to address the question “What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”

Guernsey is a self-governing British Crown Dependency with its own parliament, government and legal system, and it therefore makes and implements its own domestic laws (including tax laws).¹ United Kingdom (UK) Acts of Parliament do not automatically apply to Guernsey. Acts of Parliament would only apply by direct reference (in rare circumstances such as on matters of British nationality) or necessary implication (such as on matters relating to succession to the Crown), or by extension with the consent of Guernsey’s parliament. Importantly, **Guernsey has an existing and long-standing tax system independent of the UK.**

The UK Government, on behalf of the Crown, has responsibilities for the island’s international relations under international law. The long-standing practice of the UK is to only extend a treaty, convention or agreement to Guernsey after consultation and if Guernsey’s government has confirmed that it wishes such extension to the island. The UK is constitutionally obliged to represent Guernsey internationally even where Guernsey’s interests differ from those of the UK.

The island negotiates and enters into double tax agreements and tax cooperation agreements in its own name, under entrustment from the UK. This recognises the growing international identity of the island and acknowledges Guernsey’s own tax sovereignty separate from that of the UK. Guernsey is fully supportive of international efforts to increase international tax cooperation and implementing international tax

¹ The Bailiwick of Guernsey consists of three jurisdictions each having specific fiscal arrangements. Guernsey (population c. 65,000) is fiscally separate from the UK. Alderney (population c. 2000) is in fiscal union with Guernsey (with its income and corporate tax legislation and policy set by Guernsey). Sark (population c. 500) is fiscally autonomous but is a rural community with a basic tax system and limited public services.

standards, which provide a level playing field for all jurisdictions as well as aiding in the fight against financial crime and illicit financial flows.

Guernsey notes that resolution 78/230 is the “Promotion of inclusive and effective international tax cooperation at the United Nations.”

Whilst we understand that all Member States are encouraged to participate in the work of the Ad Hoc Committee, we would also **ask for the inclusion of Non-State Jurisdictions that have autonomy over tax matters. Guernsey would like to have the opportunity to provide input into the UN Tax Convention throughout its development and future implementation.** It is in Guernsey’s interests that global standards are consistent and universally adopted. Experience has shown that developing policies without involving all jurisdictions which might be called upon to implement them may lead to results which cannot be implemented in practice by all jurisdictions.

We note that there are plans for multi-stakeholder engagement in the work of the Committee, with those stakeholders focussed on civil society organisations that are actively working on international tax cooperation-related issues, as well as other international organisations, academia and the private sector. The multi-stakeholder engagement does not appear to provide for stakeholder engagement with Non-State Jurisdictions, nor does it appear to be an appropriate mechanism for Non-Members to engage in the process to develop the Convention.

As a Non-State Jurisdiction with tax sovereignty, Guernsey represents itself in the relevant OECD fora, allowing full participation in discussions relating to international cooperation in tax matters. Guernsey is a member in its own right of the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes and the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. Guernsey actively participates in working groups and fora developing policy in relation to the Two Pillars solution to the digitalisation of the global economy and is a member of the CARF working group and the Global Forum on Transparency and Exchange of Information, Peer Review Group (Exchange of Information on Request).

Guernsey’s government asks that the Committee recognise jurisdictions which are not UN Member States in their own right, but which are separate tax jurisdictions. Further, that those jurisdictions, such as Guernsey, be involved in developing both the procedural and substantive elements of any UN Convention or Framework Convention on international tax cooperation. Guernsey invites the Committee to consider that multinational conventions on tax which are intended to create a framework to impose obligations on jurisdictions at the level of a taxing authority need to be mindful of constitutional issues and tax sovereignty. Such matters are best addressed at the level of taxing jurisdiction, rather than solely at a state level.

Guernsey believes that ensuring autonomous tax jurisdictions can participate directly in these international tax discussions and have a role in proceedings (not just through any associated UN Member State) would be in line with the resolution to promote inclusive and effective international tax cooperation.

A handwritten signature in black ink that reads "Lyndon Trott". The signature is written in a cursive, slightly slanted style.

Deputy Lyndon Trott

Chief Minister

Government of Guernsey