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Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

The G-24 Position

The G-24 member states enthusiastically embrace the opportunity to contribute to the advancement of multilateral cooperation through inclusive and effective international tax collaboration. Our engagement over the years, is driven by a singular objective: to establish a transparent and equitable global framework for international tax cooperation that supports fairness for developing nations, enhances state accountability, and advances sustainable development through domestic resource mobilization. We therefore welcome the historical UN resolution on inclusive and effective international tax cooperation, and the chance to provide input for the Terms of Reference guiding the design of a Framework Convention on International Tax Cooperation (UNFCITC).

Firstly, the setting of the agenda is pivotal. In addressing a matter as significant as international tax cooperation, it is imperative to have a genuinely representative body responsible for identifying cross-border issues that necessitate cooperation among nations. To date, no permanent body has been mandated with this responsibility. While organizations like the OECD have developed the Base Erosion and Profit Shifting (BEPS) Inclusive Framework under the G20's auspices, a UNFCITC could formalize a lasting tax cooperation body where all member states are represented, and the negotiation processes are inclusive. Importantly, the framework convention must transcend previous initiatives that predominantly address concerns of developed countries. The new framework under the UN should ensure that developing countries not only participate on an equal footing but also directly benefit from a more equitable and inclusive system.

Secondly, there is a need for agreement on the overarching principles governing international tax cooperation. Existing efforts in international tax cooperation have predominantly focused on technical matters such as the allocation of taxing rights, exchange of information, assistance in tax collection, and the resolution of international tax disputes. However, due to the fragmented nature of such work, countries have not had the opportunity to agree on a comprehensive set of underlying principles forming the foundation for further cooperation in international taxation. The UNFCITC could serve as the ideal instrument to codify such principles. While we recognize that the detailed enunciation of these principles is not within the mandate of the current Ad Hoc Committee tasked with elaborating the Terms of Reference, agreeing to include "Principles" as a

structural element in the framework convention would be a commendable starting point. Additionally, if there is broad consensus on one or more such principles, they could be explicitly specified in the Terms of Reference.

With these background remarks, we now present our input on the Terms of Reference.

1. THE INTRODUCTORY ELEMENTS

The Preamble

The preamble should recognize that corporate taxation is a cross border issue, especially so because of increasing globalization and digitalization. The Preamble should give a broad political commitment to creating a framework for inclusive and effective international tax cooperation, with a focus on accelerating revenue mobilization for developing countries to meet their developmental goals. Framing tax within a developmental context is essential.

Objectives and Principles

The Framework Convention should prescribe the broad set of objectives and principles that UN Member States would commit to, and which would in turn form the basis for substantive commitments in technical areas through Protocols. Some of the principles that could be mentioned in the ToR itself are “respect for tax sovereignty”, “fair and equitable allocation of taxing rights”, “countering abuse of domestic, bilateral, multilateral tax law provisions”, and “combating illicit financial flows” etc. One important principle for the convention would be to prevent disputes by ensuring that the norms/rules developed are simple to implement and administer.

Commitments

The Framework Convention should underscore its commitment to broad issues such as transparency, equitable cooperation in tax administration, information exchange, and fairness in the allocation of taxing rights over international business. Being a constitutive document, the UNFCITC may not necessarily specify exhaustive commitments from Member States on technical matters, but it should include general commitments from Member States to abide by the objectives and principles, and to engage in negotiations, with no necessary interdependence on the Protocols that are being developed.

Relationship with other Agreements, Instruments and Domestic Law

The UNFCITC would need to prescribe a mechanism to establish linkages between the multilateral process at the UN, and existing bilateral and multilateral instruments for international tax cooperation, such as those negotiated and adopted under the OECD-BEPS Framework. One option is for the framework convention to serve as an umbrella for existing activities and international agreements, while enabling a more inclusive and effective creation of new measures and initiatives. Such agreements should be required to have universal

participation, sound political legitimacy, a broad mandate and compatibility with the objectives and commitments of the UNFCITC. Placing existing agreements under the umbrella of a new UN-sponsored framework convention would expand political oversight from the CoP instead of from only a small group of countries and it will also aid in administration of substantive protocols besides reducing chances of conflict with these existing agreements.

2. PROCEDURAL ELEMENTS

Decision making rules

The framework convention should prescribe decision making rules that are consistent with the rules used for subsidiary bodies of the UN General Assembly, ensuring complete participation of all member states in decision making. Furthermore, joining the Framework convention should not bind a state to join the protocol so adopted. A robust international tax cooperation framework needs to allow all countries to effectively participate in rule development, grant participation rights and avoid preconditions, and facilitate adaptation and implementation needs based on country needs and capacities.

Governance structure

The apex structure for the governance of the UNFCITC should be the ***Conference of the Parties*** (CoP), with all parties to the convention represented at the CoP. The CoP will gather periodically to review the implementation of the Convention and any other legal instruments that the CoP adopts and take decisions necessary to promote the effective implementation of the Convention, including institutional and administrative arrangements. The CoP, being comprised of political representatives of member countries, enhances state sovereignty and provides political backing and accountability for the work of the convention. It would also serve as an umbrella for a variety of instruments, ranging from Protocols on specific issues, to Codes of Conduct which can establish standards directly for legal persons. The CoP could similarly decide to add new protocols or Codes of Conduct to further its larger objectives, principles and commitments. The effectiveness of the CoP could be enhanced through the establishment of subsidiary bodies including a High-Level Advisory Group, technical committees and subject related working groups.

The working of the CoP as well its subsidiary bodies should be aided by a **well-resourced standing Secretariat** with balanced representation from developing and developed Member States of the parties to the UNFCITC, which will work as per the overall mandate of the CoP to find solutions to international tax problems and should be part of the governance structure. The organizational structure of the Secretariat should ensure adequate support for subsidiary bodies of the CoP. The role of the Secretariat should encompass preparation of technical papers/ draft protocols on identified topics and facilitating meeting and negotiations on them. The Secretariat should assist Member States in achieving the objectives of the framework convention and also aid capacity building initiatives. A key function of the Secretariat should be to create a roadmap for capacity building with special focus on capacity constrained jurisdictions, both during negotiations on

substantive commitments as well as for implementation of any agreement reached as a result of such negotiations. A substantive protocol could focus on capacity building initiatives, providing technical assistance and support to help countries strengthen their tax administrations.

The UN Committee of Tax Experts can be transformed into an intergovernmental body that plays technical role i.e. informs governments about the state of knowledge of international tax cooperation. Inclusive agenda setting may be realized through a High-Level Advisory Group that dynamically sets the agenda for the Plenary to take forward. The advisory body will also serve as a quality control platform over the technical work of the Secretariat.

3. CONSIDERATIONS OF SIMULTANEOUSLY DEVELOPING EARLY PROTOCOLS

To accelerate the development of early protocols once the framework convention is operational, the ToR should outline how the protocols to the convention would be developed, negotiated, agreed and implemented. Items may be listed for the framework to consider for early development once it starts functioning. Those items may include any issue of importance to members, including items upon which members have made a high-level commitment.

Some issues and principles that are of importance to developing countries, and some of which already enjoy widespread support in global public policy discourse could be part of early protocols. We identify some of these below, though this is not an exhaustive list. While some could be “protocols”, some could be used as “best practices”.

- Taxation of High Net Worth individuals (HNWIs)
- Non-Pigouvian tax measures for climate financing
- Tax Havens and Jurisdictional Competition: A protocol could focus on curbing the harmful effects of tax havens and discouraging jurisdictions from engaging in harmful tax competition to attract businesses.
- Illicit Financial Flows
- Information Exchange and Transparency: A UN convention could promote standardized practices for the automatic exchange of information between countries, ensuring greater transparency in financial transactions.
- Fair and Sustainable Taxation: The UN framework could promote the principles of fair and sustainable taxation, ensuring that the burden of taxation is distributed equitably and that tax policies contribute to sustainable development goals.
- Addressing Inequality: The UN framework could contribute to reducing global economic inequality, ensuring that individuals and businesses contribute their fair share to public finances.