

**INDIA'S INPUTS ON THE TERMS OF REFERENCE FOR A FRAMEWORK CONVENTION ON INTERNATIONAL
TAX COOPERATION**

1. India believes that the Terms of Reference for a framework convention on international tax cooperation should prescribe a broad outline of the framework convention, without delving into technical details on specific items that the framework convention should address, at this stage. This would be in keeping with the intent of UN GA Resolution 78/230, which tasks the Ad Hoc committee with elaborating the Terms of Reference for the framework convention, and not the terms of the framework convention itself.

2. The call for inputs from the UN Secretariat poses a guiding question – “What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”, on which inputs have been requested in the context of the substantive items contained in the provisional agenda of the 1st substantive session of the Ad Hoc Committee. India’s inputs are structured accordingly, beginning with suggestions on the specific problems that could be addressed by a UN framework convention, followed by suggestions on the possible structural elements that could be included in the framework convention to operationalize the same.

3. The specific problems/deficiencies in international tax cooperation that could be addressed through a UN framework convention could be the following:

a) **Agenda setting:** On a matter as important as international tax cooperation, there should be a truly representative body that is responsible for identifying technical issues on which countries need to cooperate. Thus far, there has been no permanent body which has been given this mandate. Although organizations like the OECD have been given such a mandate by the G20 for specific projects such as the BEPS Project, a UN framework convention could formalize a permanent tax cooperation body where all Member States are represented, and where the processes for negotiation are inclusive. This would address the limitations of past initiatives where select groups like the G20 led in setting the agenda. When the Secretariat organisationally assists the Committee, the functional approach to an inclusive agenda setting may be realized through a High-Level Advisory Group of interested jurisdictions that

dynamically sets the agenda for the Plenary to take forward. Crucially, the framework convention must go beyond past initiatives like BEPS that primarily address developed countries' concerns. The new framework under the UN should ensure that developing countries not only participate on an equal footing, but benefit directly in a more equitable and inclusive system.

b) Broad principles that would govern international tax cooperation: Most of the work in international tax cooperation so far has been focussed on technical matters such as allocation of taxing rights, exchange of information, assistance in collection of taxes, or resolution of international tax disputes. However, due to the piecemeal and scattered nature of such work, countries have not had the opportunity to agree on a broad set of principles that would form the bedrock of further cooperation in international taxation. The framework convention would be the perfect instrument to enshrine such principles. We understand that detailed enunciation of such principles is not the mandate of the present Ad Hoc Committee constituted to elaborate the Terms of Reference, an agreement on including "Principles" as one of the structural elements of the framework convention would be a good starting point. Further, if there is broad agreement on one or more such principles, they could be specified in the Terms of Reference itself.

4. Based on the areas identified above, some of the key elements of the framework convention could be the following:

A. Procedural elements

I. 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. but which would incorporate some flexibility based on the technical complexity of the matter under discussion and the sovereignty of states in tax matters. As an example, there could be different rules for the amendment of the framework convention itself, and adoption of protocols. Further, joining Framework convention should not bind a state to join the protocol so adopted. A robust international tax cooperation framework needs to:

(i) Allow all countries to effectively participate in rule development,

- (ii) Grant participation rights and avoid preconditions,
- (iii) Facilitate adaptation and implementation needs based on country needs and capacities.

II. Permanent governance structure: The framework convention should mandate a permanent governance structure for international tax cooperation, which has been missing so far. This could be akin to the Conference of the Parties (CoP) that is the decision-making forum under the UN Framework Convention on Climate Change (UNFCCC). A well-resourced Secretariat, with balanced representation from developed and developing Member States of the UN, would be critical to the effective functioning of the CoP. The Secretariat should assist Member States in achieving the objectives of the framework convention and also aid capacity building initiatives. The CoP should also be given flexibility to appoint ad hoc groups of Member States or of experts (including the present UN Tax Committee or its variation) to provide the CoP with technical papers/draft protocols on identified topics which would serve as initial drafts for discussion in the CoP.

III. Implementation arrangements: The framework convention could also prescribe different categories of implementation arrangements. For example, while there could be some legally binding commitments which could be prescribed as minimum standards in the form of protocols, other solutions could be presented as best practices which can be adopted by Member States based on their tax policy goals and objectives. The protocols should be adopted by various Member States based on ratification.

IV. Protocols: The Terms of Reference could consider broad areas on which future protocols could be negotiated. There can be a schedule to the framework convention listing the probable topics that would be taken up for developing as best practices or for protocols. However, some degree of flexibility should be built in to address emerging issues not initially foreseen.

V. Representation: In this context, it is also important for Member States to specify the geographic entities/jurisdictions represented by them so that the decision-making process is transparent and clear to all participating Member States.

B. Substantive elements

I. **Preambular paragraph:** The Preamble should be a broad political commitment on creating a framework for inclusive and effective international tax cooperation framework, with a focus on accelerating revenue mobilization for developing Member States to meet their developmental goals. Framing tax within a developmental context is essential. Developing countries face revenue shortfalls and require domestic resource mobilization to fund essential public goods for growth.

II. **Broad objectives and principles:** The framework convention would be a constitutive document that would 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, and multilateral tax law provisions”, etc. One important principle for the convention would be to ensure that the norms/rules developed are simple to implement and administer. The norm setting processes at the United Nations should include dispute prevention as a guiding principle.

III. **Mechanism for interplay between existing legal instruments/arrangements:** While the framework convention would be a one-of-its-kind exercise, it would need to prescribe a mechanism to establish linkages between the multilateral process at the UN with other bilateral and multilateral instruments currently existing for international tax cooperation, such as those negotiated and adopted under the BEPS Project. Such interdependence/interplay may be suggestive/ optional for the Member States joining the Convention.

IV. **Capacity building:** The framework convention could 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.

V. **Commitments:** The framework convention, being a constitutive document, may not necessarily specify exhaustive commitments from Member States on technical matters. Commitment to the framework convention may include general commitments from Member States to abide by the objectives and principles to engage in negotiations, with no necessary interdependence on the Protocols that are being developed.

VI. **Sharing best practices:** The framework convention could consider the option of establishing a mechanism for publishing best practices that Member States can adopt on a voluntary basis.