ICC response to the Call for Inputs launched by the Chair of the UN Ad Hoc Committee to Draft Terms of Reference for a UN Framework Convention on International Tax Cooperation.

The International Chamber of Commerce (ICC), as the institutional representative of over 45 million businesses in more than 100 countries – and in its capacity as Permanent Observer to the United Nations (UN) General Assembly – appreciates the opportunity to contribute to the Call for Inputs launched by the Chair of the UN Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation ahead of its 1st Substantive session.

As Permanent Observers to the UN General Assembly, we stand ready to constructively engage throughout the overall process.

We understand that in its first substantive session (26 April to 8 May 2024), the Committee will undertake a substantive scoping of the draft terms of reference (ToRs) and discuss an indicative list of matters to be addressed in the draft ToRs. The substantive scoping will be focused on both procedural elements and substantive elements, and consideration of simultaneously developing early protocols will also be discussed.

In line with ICC principles throughout the past 100 years – since the first discussions on tax matters at the League of Nations -- we would like to reiterate the important role played by international tax cooperation in avoiding international double taxation and in ensuring greater tax certainty on a global scale. ICC has always supported – and continues to believe in – transparent, efficient, predictable, and stable tax regimes which incentivise long term investment, job creation, and economic growth.

A coordinated global tax system, founded on the premise that stability, certainty, and consistency in global tax principles is the only way forward to foster cross-border trade and investment, and ultimately to promote global economic growth. Thus, we believe that any international tax cooperation effort should be based on this premise and inspired by those principles.

Decision-making process

We note (Annex 1 para 1) and agree that '*given the importance of international co-operation, every reasonable effort should be made, within the available time frame for negotiations, to seek* *consensus on substantive matters in the ad-hoc committee.'* We would like to reiterate the importance of consensus and strengthened co-operation among multilateral organisations to provide certainty and clarity in the application of any new tax processes.

In the interest of ensuring that any UN infrastructure and procedure is robust we believe it is essential we proceed in established phases and work on protocols which should only be consequent to the Terms of Reference and agreement on an overarching convention.

If the issues to be addressed will pertain to international transactions, the avoidance of double taxation is of paramount importance to provide both certainty of treatment for cross border trade and investment and to prevent excessive or discriminatory treatment of international business interests. Without consensus on the terms of reference or the detail of any early protocols and, ultimately, multilateral ratification of the proposed framework convention, such action will have little positive impact on the administration or balance of international taxation. Certainty and legality will be mostly ensured in case any new convention works on the basis of deep and broad consensus only. The potential multiplication, contradiction and fragmentation of tax frameworks would lead to increased complexity and administration, greater uncertainty and ultimately to an increase of tax disputes. Should the allotted time frame not be sufficient, then further time should be allocated to reach consensus, rather than press on under the auspices of a divisive simple majority vote.

In short, we firmly believe that consensus and broad-based buy in from governments is imperative if this process is to deliver on its stated aim of enhancing international tax cooperation.

Inclusive engagement with taxpayers

We also strongly support '*inclusive and effective international tax cooperation*.' To that end, we believe a stable international tax framework only comes from building an inclusive consensus-based approach from all stakeholders which includes governments and the taxpayers (the business community). In relation to this initiative, we also recommend a more structured dialogue channel for receiving taxpayers' input.

The UN Committee of Experts on International Tax Cooperation has effective protocols to work with multiple stakeholders, including involving business and corporate taxpayers as well as civil society as members of their subcommittee or as observers. We believe that any new UN tax framework would benefit from ensuring taxpayer input in a structural way.

ICC and its members are keen to engage constructively with the UN on this new tax initiative in order to develop principles-based international tax and trade policy that facilitates investment and the achievement of the Sustainable Development Goals (SDGs). For our members, tax policy is not just a necessary means of raising government revenues, but should encourage sustainable growth and development through investment in jobs, infrastructure, and technology, and which promotes free trade, sustainable investment and fair competition. We believe tax systems should support a level playing field amongst all businesses, ensure the elimination of double taxation, and simplify administrative processes.

To date, we and other business organisations have been able to contribute to the development of tax laws and rules by the OECD/G20 Inclusive Framework through periodical public consultations and the setup of Business Advisory Groups. ICC also participates as an observer to the UN Tax Committee of Experts sessions by providing comments to the different workstreams undertaken by the Committee. As ICC we also participate in the EU multi-stakeholders Platform for Tax Good Governance, and we share business views and insights with the newly established Ministerial Platform for Taxation in Latin America and the Caribbean (PTLAC) through the Private Sector Advisory Council. We would be keen to help the UN intergovernmental committee understand how businesses like the ones of our members operate and how the complex value chain is created in different sectors. We believe this will certainly help inform the international tax policy discussion. The international business community can provide invaluable insights into the practical aspects of the international tax system that sometimes are overseen and can be easily misunderstood even by the most adept tax expert at the international organizations or tax authorities if lacking first-hand knowledge of the business model and complex value chain.

Importance of ensuring expertise and coordination

We welcome the fact that the majority of members of the ad hoc committee are drawn from national capitals' finance and tax administrations. This will help ensure that procedural and substantive elements are focused on deliverable outcomes for which a high degree of technical knowledge and experience will be required, particularly when drawing up a model convention or protocols, with each phrase potentially open to (mis) interpretation and (mis) application. It will be equally important that all Member States (and external stakeholders) have the opportunity to review and engage in the process, to provide a line by line review and analysis of the implications and to provide their comprehensive inputs and endorsement. This also includes ensuring sufficient time is allotted to all Member States and external stakeholders to review any text and documents.

Furthermore, drawing on tax expertise from partner organizations will only further strengthen collaboration on domestic resource mobilization and ensure the UN finds workable solutions for administrators and taxpayers that are based on well-established tax policy principles. We therefore encourage coordination among intergovernmental organisations in the area of international tax cooperation such as through the Platform for Collaboration on Tax, which is a joint initiative of the International Monetary Fund, the Organisation for Economic Co-operation and Development (OECD), the United Nations, and the World Bank Group.

Leveraging on existing frameworks, mitigating inconsistencies and enhancing tax certainty

To this end, we believe the UN can also draw on expertise and encourage knowledge sharing amongst the international organisations. International institutions should avoid both duplication of effort and contradictory approaches to the same issues. Developing parallel international tax frameworks will only create instability and uncertainty for taxpayers which will only result in reduced economic growth and development as the result of diminished cross-border investment. Within this new UN process, we suggest refraining from reinventing the wheel with regard to initiatives already under way (such as “excess” profit reallocation and minimum effective tax rates under OECD’s Two Pillar Solution) and leveraging the progress made in other multilateral processes to date.

The introduction of new unilateral sector specific taxes should be avoided as they could lead to consequent retaliatory measures and undermine trade and investment. Moreover, taxing based on gross revenue—not net income—leads to double and even multilayer taxation and disputes. Taxing based on gross income also does not consider a business’s operating costs. When taking based on gross income, a company with a low profit margin would face a significantly higher effective tax rate than a company with a high profit margin. Gross revenue taxes also distort business decisions, and tend to create adverse impacts to small businesses and consumers, particularly because they often bear the cost of the tax.

Should the balance of taxing rights between source- and residence-based jurisdictions be considered, care should be taken to ensure that gross revenue taxes and withholding taxes are kept to a minimum as they can distort investment decisions, particularly if full and timely refunds or credits are not readily available. To that end, due consideration could be given to automated processes and systems and a greater flow of information to ensure that both double taxation and double non-taxation is avoided.

One of the persistent key concerns is also ensuring appropriate dispute prevention and resolution mechanisms. In this new process, there should also be a commitment to improve the resolution of tax-related disputes between jurisdictions and to drive administrations to embrace inclusive mutual agreement processes and dispute resolution mechanisms. A drive towards co-operative compliance, sharing best practice, appropriate capacity building and training and increased commercial awareness would also be beneficial for governments and taxpayers alike.

In any case, we reiterate that according to established UN practices in the context of framework conventions, any future work on protocols should be consequent to the Terms of Reference and agreement on an overarching convention.

Tackling Illicit Financial Flows: Prioritising policy to address the informal economy

Noting renewed calls to curb illicit financial flows, we would like to emphasise the need and our support to fight corruption in all its forms, from political and private interests, through to bureaucracy, administration and tax collection. Transparency and the rule of law are key to ensuring a robust tax system and fair competition. However, we are concerned about an increasing narrative – especially around multinational companies – that brigades together “illicit financial flows" "tax evasion", "tax avoidance" and "tax planning". ICC and its members certainly condemn illegal and fraudulent behaviours, but distinctions must be made among these different situations. An over-simplified narrative risks harming legitimate and compliant businesses.

Multinational businesses with robust governance procedures, external audit and regulatory obligations, as well as SMEs compliant with established rules and standards, have nothing to fear from clearly defined tax rules, but are disadvantaged by the informal economy which is neither taxed nor regulated and which suppresses economic growth, wages, health and safety, and undermines efforts to deliver greater equality and sustainable development goals.

We suggest the committee to focus on proposals aimed at formalising a larger proportion of the economy through policies that encourage investment in skills and technology, social protection and financial inclusion, and not on penalising established and regulated businesses through additional taxes or administrative burdens.

We thank for the opportunity to provide our input on initiative and we stay at further disposal of the Ad-Hoc Committee Bureau to share the business community perspective on international tax cooperation matters.