

Japan's Written Inputs to the work of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

To begin, we would like to express our appreciation to the Chair of the Ad Hoc Committee (the "Committee") to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (the "Convention") for giving us the opportunity to provide written inputs to the work of the Committee, namely, to its first substantive session. We would like to make some comments which we hope will help the Committee's further work.

First, we would like to propose a number of principles to be considered when drafting the terms of reference (ToR). Based on these principles, we also would like to propose some potential items to be covered in the ToR.

1. Principles for Drafting the ToR

The following points are the bases of our proposals included in section 2. and could be contained in the preamble of the ToR

- ✓ The process of drafting the ToR should be inclusive so that the Convention can be sufficiently effective with a wide range of participation.
- ✓ The Committee should avoid undue duplications and consider consistency with activities conducted by other international organizations.
- ✓ The ToR should set out the negotiation procedure and outline the Convention at a high level, as the purpose of the ToR is to facilitate an effective and efficient negotiation process for the Convention.
- ✓ The Convention should be concise and mainly outline procedural elements which can enhance potential international tax cooperation, following other existing framework conventions. It should be noted that the "Report of the Secretary-General on Promotion of inclusive and effective international tax cooperation at the United Nations" published last year¹ presented three options for consideration: (a) a multilateral convention on tax; (b) a framework convention on international tax cooperation; and (c) a framework for international tax cooperation. The last year's resolution adopted the second option for

¹ See A/78/235

strengthening international tax cooperation².

- ✓ Delegates with tax expertise should lead technical discussions on tax matters, taking into consideration domestic tax principles in each party of the Convention.
- ✓ The Committee and a possible subsequent committee with the mandate of negotiating the Convention should complete their work swiftly with a wide range of participation so that the conference of the parties may proceed with the technical discussions.
- ✓ The Convention should prioritize aspects of international tax cooperation which help countries to improve their domestic resource mobilisation (“DRM”), because strengthening DRM is one of SDGs targets.

2. Proposing potential items to be covered in ToR.

- ✓ The ToR should contain; i) Modalities relating to the negotiation process for the Convention; and ii) Structural elements of the Convention.

i) Modalities relating to the negotiation process of the Convention.

(a) Decision Making Process

- The negotiation process should be conducted on a consensus basis so that the Convention can be sufficiently effective with a wide range of participation. To ensure inclusiveness, a higher standard should be applied in determining the substantive matters of the Convention from the perspective of the critical importance of the Convention, in accordance with recent precedents including the Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes³.

(b) Collaboration with Other International Organizations

- To avoid undue duplication, the Committee should draft the ToR in collaboration with other international organizations which have already conducted activities in the area of international tax cooperation.

ii) Structural elements of the Convention

We propose the following structural elements of the Convention, with reference to the United Nations Framework Convention on Climate Change⁴.

² See A/C.2/78/L.18/Rev.1

³ See A/RES/75/282

⁴ See FCCC/INFORMAL/84 GE.05-62220 (E) 200705

(a) Introductory elements

- As introductory elements, we propose to include: “Preamble”, “Definitions”, “Objectives”, “Principles”, and “Relationship with Existing International Agreements on International Tax Cooperation”. Concerning “Objectives”, the main objective of the Convention should be the improvement of DRM, because strengthening DRM is one of SDGs targets.

(b) Operational articles (subject-matter specific)

- As operational articles, we propose to include: “Commitments”, “Exchange of Information”, “Data Collection and Analysis”, “Capacity Building”, “Review”, “Financial Resource and Mechanism,” and “Collaboration with Other International Organizations”. We also propose some details of the above items as follow:

- “Commitments”

We propose to include the following commitments, namely for the purpose of encouraging and supporting countries to improve their DRM:

“All parties shall:

- A) Improve DRM, including through support to tax administrations;
- B) Enhance the effectiveness and efficiency of tax administrations; and
- C) Take actions to prevent corruption by government officials so as to combat illicit financial flows.”

- “Exchange of Information”

To provide effective and efficient capacity building programs, parties should share information on their tax administrations, highlighting specific areas that need assistance for improvement.

- “Data Collection and Analysis”

To facilitate effective international tax cooperation, parties should collect and analyse data related to tax administrations in each country, such as number of taxpayers, revenue share of taxes, tax administration capacity, etcetera.

Statistical data and holistic objective analysis would be useful for identifying specific challenges and possible solutions in terms of developing protocols under the Convention.

Data and analysis would also be useful for providing appropriate capacity building

programs to help the improvement of DRM based on the challenges identified in each country.

➤ “Capacity Building”

The capacity building provided under the Convention should aim to improve DRM, because the main objective of Convention should be the improvement of DRM.

➤ “Collaboration with Other International Organizations”

The conference of the parties should collaborate with other international organizations which have already conducted the activities in the area of international tax cooperation.

(c) Institutional arrangements

- As institutional arrangements, we propose to include: “Conference of the Parties”, “Secretariat”, “Interim Arrangement”, and “Settlement of Disputes”. The provision on “Conference of the Parties” should contain the principles of the decision-making process for the conference of the parties so that the first meeting of the conference of the parties can be conducted smoothly, while the conference of the parties can determine the details and amendments if needed.

(d) Procedural arrangements

- As procedural arrangements, we propose to include: “Amendments to the Convention”, “Annex and Protocols”, “Right to Vote”, “Signature”, “Ratification”, “Acceptance”, “Approval” or “Accession”, “Entry into Force”, “Reservations”, and “Withdrawal”. We also propose some details of the items as follows:

➤ “Annex and Protocols”

This provision should not contain the specific policy areas of protocols but only contain general procedures related to protocols — as was done in the United Nations Framework Convention on Climate Change — such as who may be parties to a protocol. Decisions under any protocols should be taken only by the parties to the protocol concerned. The resolution chose the Convention as an instrument so as to outline the core tenets for future international tax cooperation such as key principles.

➤ “Reservations”

“Reservations” is an important clause for as many countries as possible to join the convention because some countries may have difficulties to accept all the clauses in the Convention.