

Statement on behalf of Norway

Written input for the First Substantive Session of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

General remarks

Resource mobilisation through taxation is an important factor in reaching the SDGs. To this end it is fundamental that countries can make use of the potential for raising revenue that is specific to the characteristics of their economy such as the presence of natural resources and other immovable assets. Properly designed tax legislation, including reporting requirements, is the starting point to achieve this. Equally important is a well-functioning Tax Administration.

International tax cooperation plays an important role in domestic resource mobilisation in the tax area and thereby supporting the SDGs. International tax cooperation has an important role in enforcing domestic tax legislation through exchange of information for tax purposes. International tax cooperation is also fundamental to facilitate trade and investment by allocating taxing rights between tax treaty partners and preventing double taxation. At the same time Tax Treaties and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (MAAC) provide a framework for exchange of information for tax purposes – this is crucial in preventing tax avoidance and tax evasion both in relation to domestic law and tax treaties and addressing illicit financial flows related to taxation.

Significant progress has been made in international tax cooperation over the last 15 years. Exchange of information for tax purposes has expanded beyond what many considered possible. The G20/OECD BEPS Project made many important recommendations on the strengthening of domestic law, reporting requirements, exchange of information and strengthened tax treaties, and provided for clarifications of the OECD Transfer Pricing Guidelines. This progress has been made available to all interested parties through the Inclusive Framework on BEPS and the open ended MAAC monitored by the Global Forum on Transparency and Exchange of Information.

Over the last 5 years the Inclusive Framework has worked on the ambitious and important Two-pillar project to address the challenges of the globalisation and digitalisation of the economy and fundamentally change the international framework for corporate taxation. In this project 146 jurisdictions representing different levels of economies have participated. Pillar 2, the global minimum tax, has been implemented by more than 50 jurisdictions and will have significant effects on curbing profit shifting and preventing undertaxation of profits, even for entities in jurisdictions that do not implement the rules.

It is important that all jurisdictions can benefit from the progress made in international tax cooperation. Capacity building and sharing of experience can contribute to this aim. Initiatives like Tax Inspectors Without Borders, Tax for SDG and the Platform on Tax Collaboration serve as successful examples where International Organisations have joined forces and made use of their different capabilities. We encourage developing such coordinated efforts further in the global tax space.

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In this new effort in the UN, it is important that the progress made is preserved and that the work is focused on adding value to the existing framework rather than duplicative or parallel tracks. This would carry the serious risk of discarding measures that have yet to be fully implemented. We should also be mindful of the risks of creating competing standards. This could fragment the framework for international tax cooperation and potentially create new opportunities for tax planning and tax evasion, as well as compromising trade and investment needed for the benefit of all countries.

Need for analysis to identify priority areas

It is important that the negotiations are preceded by careful analysis – shared and agreed upon by as many Member States as possible – that identify areas where a Framework Convention can complement existing cooperation. The Secretary-General's Report preceding the resolution focused mainly on the effectiveness and inclusiveness of the existing frameworks for international tax cooperation, and whether they also take into account the needs and priorities of developing countries. Thorough and more precise analysis would also be needed to identify what those needs and priorities are, and if and how they could be addressed in a Framework Convention. The analysis must carefully consider needs and priorities of all countries.

This call for input is open to all stakeholders and will provide a broad basis for such analysis. We also emphasise the importance of leveraging the knowledge and experience accumulated in other International Organisations, in particular the OECD, the IMF and the World Bank. The yearly Inter-Agency Report on Financing for Sustainable Development includes all these institutions and could be tasked to give more detailed input on the existing structures and possibilities for further coordination in the multilateral tax space. This new process at the UN provides for a good opportunity to further strengthen and enhance the cooperation between these IGOs. An opportunity for academia, civil society, the private sector etc. to input should help spark greater global interest, buy-in and process legitimacy.

The ToR should require that the negotiations take fully into consideration existing international frameworks for tax cooperation. In this regard, we believe that it is necessary to consult with IGOs, and in particular the OECD – when drafting the ToR, when analysing and identifying needs and priorities to be addressed, and in negotiating the Framework Convention.

The analysis could point both to areas of an overall, principled nature and to more specific gaps or less developed aspects of international cooperation in tax matters. A mapping of practices in national and international tax policy could be considered. Another area that could be considered for closer analysis is the unlocked potential of building capacity in domestic tax systems and tax administrations to raise tax revenues and provide access to exchange of information in tax matters.

Sequencing of work

Building on the above, the ToR should provide for a sequencing of the work in front of us. First, there should be a phase of analysis to identify the needs and priorities to be addressed in the Framework Convention and its protocols. When this is available, we should proceed with the negotiations of the Framework Convention, and thereafter the negotiation of Protocols. Such sequencing is necessary to determine an appropriate scope of the Framework Convention and will facilitate the negotiations of Protocols to the Convention. Although the resolution suggests that one may consider developing early protocols and points to illicit financial flows and cross-border services as possible issues for such protocols, it is our view that these also need to be preceded by careful analysis before being

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considered as protocols in the Framework Convention. It is in our view more difficult to find agreement on Protocols when the scope and elements of the Framework Convention are simultaneously being negotiated.

Governance issues

The ToR should address the governance of the negotiations.

International tax cooperation can only be effective if a large number of countries participate, either bilaterally or multilaterally, as in this process. We have seen this in relation to exchange of information and in the IF. At the same time, taxation is at the heart of countries' sovereignty and can also raise constitutional issues. Failing to take this into account, we fear that this process will not lead to a result that is acceptable to all Member States, thus not achieving the wide implementation that is necessary to benefit all countries and to support the SDGs. On this background, we strongly believe that the decision-making in the negotiations on substantive issues should be based on consensus, and that this should be a part of the ToR. We note that other Framework Conventions on transnational substantive issues where wide adoption is considered necessary was adopted by consensus, i.e. the Framework Convention on Climate Change, or by a qualified majority of 2/3, i.e. the Convention on Cybercrime. There are several other examples of such modalities.

Whether or not negotiations proceed in this Committee or in a new Committee, we think that it is important to ensure wide participation. To this end, a Bureau should consist of 20 members, 4 from each region. This ensures that a wide range of views will be brought into the preparatory work conducted by the Bureau.

Taxation is a highly technical subject, and the Framework Convention should be negotiated by tax experts. Negotiating a Framework Convention on tax will inevitably be resource intensive and coincide with other important tax work. This should be taken into account when setting the timeframe for the negotiations. Sufficient time must be allowed to conduct thorough analyses to form the basis of the negotiations, and meetings of the Committee should be limited to 5 days at a time. Furthermore, we consider it important that the negotiations take place in a hybrid format. Costs associated with travel and physical presence in NY-based negotiations are high. Hybrid sessions promote inclusiveness and ensure that all Member States, and in particular developing countries, can participate with tax experts. We appreciate that the adopted modalities for the negotiations of the ToR encourages Member States and International Organisations to contribute with funds earmarked for covering costs of developing countries but find it unlikely that this will be sufficient.

Specific matters that could be addressed in the Framework Convention

The ToR should include items that *could be considered* for inclusion in the Framework Convention and Protocols. In line with the above it is important that sufficient analysis precedes the decision on items to be included in the Framework Convention and Protocols.

Questions of mechanisms around Secretariat, role of UN Tax Committee, and possible dispute resolution mechanisms in a the Framework Convention will need to be addressed in detail informed by Member State discussions. In addition, we believe at this stage that a couple of items could be considered to respond to the terms of the resolution. These are only preliminary ideas and examples that in no way exclude other options at a later stage.

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VAT

Taxation of business profits is levied on an origin basis, seeking to tax value creation “at source”. The source of value creation can for obvious reasons be difficult to determine, especially when value chains are global and MNEs utilize the synergy effects and specialisation advantages of being a global enterprise. An important part of the BEPS-project was to strengthen the link between the location of production and the location of taxation, but it seems clear that this effort will not fully succeed, at least when it comes to taxing the biggest multinational enterprises. That is why the two-pillar solution tries to shift some of the taxing rights away from the country of origin, towards the country of destination (pillar 1) and the country of residence (i.e., of the UPE (pillar2)). Shifting taxing rights from the origin country to the destination country arguably has the advantage that taxation is not exposed to the risk of profit shifting or tax competition. The incidence of a consumer-based tax depends on the market elasticities and is broadly equivalent to a tax on business profits, at least in the long run. A broad-based VAT is neutral in the sense that it does not distort savings or production decisions. Being destination based, it does not induce tax competition or income shifting. The VAT is a well-established system in many countries, including many developing countries, and we have systems to handle cross border sales. Norway believes that strengthening VAT systems is a good alternative to address the challenges digitalisation and globalisation of the economy pose for taxation of income from certain business models, in particular for developing countries. Work on this could be considered as part of the Framework Convention.

High Net Worth Individuals

More effective taxation of High-Net-Worth Individuals can play an important role in reducing inequality through the tax system. Issues related to the taxation of wealth could be of interest in this regard. While the decision to tax wealth is subject to the preference of national governments, access to information on the ownership and value of assets situated both in a state of residence of the taxpayer and in the state where the asset is located (source state) is fundamental to the administration of a tax on wealth. Such information can also be relevant to taxation of income. The Framework Convention could be a good vehicle to set out standards or best practices for reporting requirements on assets not already covered by existing standards for automatic exchange of information, which could be used for exchange of information in the existing framework. Improved reporting on assets domestically and exchange of such information internationally will significantly reduce the opportunities for tax planning, tax avoidance and tax evasion. As such, this matter may also answer the call for consideration of early protocols on illicit financial flows in the resolution. Looking into this could also support the current G20 agenda.

Environmental taxes

In the Organisational Session several Member States, in their General Statements, mentioned Climate Taxes as an area where the UN could take on work. As there is a strong link between climate change and the SDGs we would also be open to consider this to supplement other work in the area.

We look forward to participating in this work.