

Outline of Draft Terms of Reference for UN Framework Convention on International Tax Cooperation

1. Introductory Elements

Preamble

The Parties to this Convention

RECALLING the priorities of the UN GA resolution 78/230 emphasizing on the timeliness and importance of strengthening international tax cooperation amongst the UN member states on equal footing to make it fully inclusive, robust and more effective;

ACKNOWLEDGING the growing importance of cooperation in international tax matters, removing obstacles in equitable taxing rights so that Governments may better cooperate in generating financing for development for mobilizing domestic resources in line with Strategic Development Goals by leveraging existing strengths and addressing gaps and weaknesses in current international tax cooperation efforts and arrangements aimed at improving the fairness, transparency, efficiency and effectiveness of their tax systems to work together to eliminate tax evasion, tax base erosion and profit shifting without any discrimination,

REAFFIRMING its resolve in combating illicit financial flows, recovering and returning stolen assets, promoting financial integrity, improving public institutions, cross-border trade and investment, and boosting coordinated development and inclusive growth amongst the UN member states;

RECOGNISING the tax sovereignty of all member states in international tax cooperation and rule of law that allows all countries to effectively participate in

developing the rules on equal footing by right and without preconditions by taking into account the different needs, priorities and capacities of all countries to meaningfully contribute without undue restrictions, and to participate in agenda-setting, debates and decision making, either directly or through country groupings, according to their preference, and adapt and implement them in accordance with their needs and preferences,

EMPHASIZING the capacity-building needs and priorities of developing countries so that they can effectively participate in the full range of international tax cooperation in an equitable manner,

DESIRING to strengthen the existing cooperation amongst various international and regional organizations and further enhancing the collaboration between these organizations on issues relating to international taxes and international tax cooperation,

Have agreed to adopt the UN Framework Convention on International Tax Cooperation as follows:

Principles

The Organization and its Members, in pursuit of the Principles stated above, shall act in accordance with the following Principles:

- i. The UN Framework Convention on International Tax Cooperation is based on the principle of the sovereign equality of all its Members,
- ii. The UN Framework Convention on International Tax Cooperation shall produce equitable international tax rules that provide all countries with additional resources and contribute to the achievement of the Sustainable Development Goals.

- iii. All Members shall fulfill in good faith the obligations created by and in accordance with the UN Framework Convention on International Tax Cooperation,
- iv. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of this Convention. All Members shall settle their international tax disputes under the mandate created by the UN Framework Convention on International Tax Cooperation,
- v. The UN Framework Convention on International Tax Cooperation aims at the Promotion of inclusive and effective international cooperation at the United Nations highlighting among other issues, equitable taxation rights, exchange of information, the need for all countries to work together to eliminate tax evasion, tax base erosion and profit shifting and to ensure that all taxpayers, especially multinational companies and transnational corporations, pay taxes to the governments of countries where economic activities occur, value is created and from where revenues are generated.
- vi. All member states aim to contribute to building a growth-friendly tax environment through cooperation and sharing of best practices and enhancing tax capacity building.
- vii. The Convention shall focus on such policy options and arrangements that can be effectively implemented by all member states – taking into account their different needs, priorities, and capacities.
- viii. Each Party shall designate or establish one or more competent authorities and one focal point for the implementation of this Convention.

Relationship with other agreements, instruments and domestic law

The Terms of reference on UN Framework Convention on International Tax Cooperation should take into consideration the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and national levels keeping in view that it should spearhead all initiatives and take its ownership.

2. Operative Provisions

Substantive Elements (Objectives)

- i. All the parties to the Convention shall take appropriate measures to ensure that international tax laws be applied equally and without unjustifiable differentiation based on fair and equal taxing rights for all member states ensuring rightful tax collection for all its members.
- ii. The Convention shall encompass equitable and fair international taxation rules including but not limited to taxation of all cross border services provided physically or digitally, income generated from the supply of digital goods, cryptocurrency and block chain technology and environmental taxation.
- iii. The Convention shall facilitate efficient exchange of information as well as the right to receive from other Member States on all cross border payments for whatever purpose including but not limited to services and movable and immovable properties in all its manifestations made by individuals, corporate entities and other legal structures.
- iv. The Convention shall include the taxation of all payments made in consideration for the use of, or the right to use, distribution rights in respect of a product or service, insurance and reinsurance premiums and

- fees to provide a financial guarantee, or other financing fees to be taxed by the source state.
- v. All member states have the inherent right of taxation with taxes being paid in the States where economic activity takes place and value is created.
 - vi. Rights and obligations created by the Convention on fighting tax evasion, corruption and other illicit financial activities, including elimination of double taxation as well as double non-taxation,
 - vii. The Convention should focus on swiftly endorsing and enforcing mechanisms to increase accountability and transparency in the corporate sector, especially with regard to large MNCs.
 - viii. The rights and obligations created by the Convention shall be prospective.
 - ix. The Convention shall focus on implementing an international administrative framework aimed at reducing the high compliance costs on businesses and collection costs in tax authorities.
 - x. The Convention shall modify the existing bilateral rights and obligations of the Parties created by any other agreement or instrument to the extent provided for in the Convention.

Operational Elements

The objectives of the Convention shall be realized through the following bodies:

- i. The Conference of the Parties, which will be:
 - a. the supreme decision making body of the Convention,
 - b. be responsible for the effective implementation of the Convention,

- ii. The Secretariat which will be responsible for the day to day operations under the Convention, and shall
 - a. make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required,
 - b. prepare necessary reports and submit it to the Conference of the Parties,
 - c. coordinate with other UN, international and regional bodies and
 - d. perform any other functions so entrusted to it by Conference of the Parties or under any Protocol,
- iii. UN Capacity Building Body which will provide tax-related capacity building trainings, courses and technical assistance to member countries on various issues related to international taxation.

High level commitment to Capacity Building

- i. The implementation of the existing rights and obligations created by the Convention on fighting tax evasion, corruption and other illicit financial activities, exchange of relevant information etc requires enhancing substantially the technical capacity of the member countries especially the developing countries.
- ii. The Convention should create a United Nations Tax Administration Capacity Building Body to provide tax-related capacity building trainings, courses and technical assistance to member countries on various issues related to international taxation.
- iii. The body shall also carry out academic researches and exchanges of knowledge sharing and best practices to facilitate member countries in their capacity building.

3. Time Frame

The Time to Complete the Convention

- i. The Convention shall be completed within one year after the UN General Assembly approves/adopts the terms of reference preferably in its 80th Session.
- ii. The General Assembly should adopt the Convention by simple majority.
- iii. The Convention shall be binding on all member states.

Approaches to Develop Protocols and Time Frame

- i. The Convention shall authorize the establishment of technical committees to develop Protocols detailing specific commitments of the parties to the Convention.
- ii. The Protocols should be an integral part of the Convention.
- iii. The technical committees should be constituted during the seventy ninth session of the General assembly.
- iv. The Protocols should be completed simultaneously by the technical committees and be presented in General Assembly during its 79th Session.

4. Possible Specific Priority Areas That should be addressed in Simultaneous Early Protocols

- i. The Convention should include development of Protocols detailing the necessary commitments of the Parties inter alia on the following items:
 - a. equal taxing rights for all member states ensuring rightful tax collection for all its members,
 - b. taxation of all income or receipts generated through cross border goods and services,
 - c. environmental taxation,

- d. exchange of information including automatic exchange of information, exchange of information on request and spontaneous exchange of information including information regarding movable and immovable properties,
- e. rules for enforcing mechanisms to increase accountability and transparency in the corporate sector, especially with regard to large MNCs,
- f. rights and obligations created by the Convention on fighting tax evasion, corruption and other illicit financial activities,
- g. taxation of cryptocurrency and block chain technology,
- h. treatment of illicit financial flows issues related to its taxation,
- i. transparency, compliance and reporting under the Convention,
- j. capacity building of member countries, and
- k. Settlements of Disputes,

5. Resources to Support the Work of the Negotiating Body

Request to the Secretary General to make the Resources Available

- i. The Secretary General may authorize that the operations and the work of the negotiating body should mainly be funded by the ECOSOC.
- ii. The technical committees established for the purpose of developing Protocols to the Convention should also be funded by the ECOSOC.

Request to Member States to Support Developing Country Participation

- i. The Operations under the Convention shall be funded as under:
 - a. Annual Contributions from the member states to be allocated by the General Assembly on the basis of some agreed formula, and

- b. Donations from other international organizations, governments and other persons and businesses.