

Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Switzerland is looking forward to the upcoming discussions regarding the terms of reference to be drafted for the elaboration of a United Nations Framework Convention on International Tax Cooperation and is grateful for the opportunity to share with you in advance the following considerations in this respect:

Scope of the Framework Convention

We believe that the objective of the Framework Convention should be to further contribute to the building of a reasonable and effective international tax system by ensuring the inclusiveness and effectiveness of international tax policy discussions and establishing a common understanding of the development of international tax policies.

In order to maximise the use as well as the inclusiveness of a Framework Convention, its scope should focus on the basic principles of international cooperation regarding taxation that represent a broad-based consensus and the necessary institutional framework.

Eventual substantive provisions regarding the allocation of taxing rights between States, standards applicable on domestic legislation or transparency and exchange of information should be confined to additional protocols. Such a modular set-up would enhance acceptability of a Framework Convention and respect the sovereignty of States regarding taxation.

Additional protocols to the Framework Convention

Switzerland welcomes the possibility to develop additional protocols simultaneously to the Framework Convention. However, at this stage, the terms of reference should focus primarily on the content of the Framework Convention.

Substantive elements

In defining the substantive elements to be covered, it will be critical to achieve complementarity between the work of different international fora, retain the progress made in other fora, and focus the work on where this process can add most value, in particular for developing countries. Switzerland proposes the following possible substantive elements to be listed in the terms of reference:

- **Capacity building:** The United Nations are due to the longstanding experience well placed to coordinate efforts of the various actors in the field of capacity building regarding taxation. An additional protocol could establish a forum for such coordination including mechanisms, for the monitoring of effectiveness as well as the funding of these activities by the signatory States.
- **Domestic Resource Mobilisation:** Further research could be undertaken, on how to support domestic resource mobilisation by developing countries. An area where Switzerland has experience and would be happy to contribute, would be the implementation of VAT, which is not only an easy to apply tax to raise revenue with few economic distortions but also an effective instrument to control and integrate the informal economy. Other issues to explore could be indirect taxes on carbon that could contribute to, both, sustainable development and revenue.
- **Tax certainty:** Effectiveness of the international cooperation in taxation could be fostered through enhanced tax certainty. Increasingly multilateralised and complex

international tax regulation requires stronger mechanisms for dispute resolution including binding arbitration. It could be investigated whether the establishment of a respected and trusted permanent body for arbitration in tax matters could counter the current hesitation of many countries to agree on binding arbitration in conventions for the avoidance of double taxation treaties. In the field of investment protection agreements, it can be observed that binding arbitration clauses are widespread and that most countries, including many developing countries, agreed to use the International Centre for Settlement of Investment Disputes ICSID established by the World Bank as forum for arbitration.

Procedural aspects

When drafting the terms of reference for the elaboration of the United Nations Framework Convention on International Tax Cooperation, utmost care must be given to the question of decision making. Inclusive and effective cooperation requires broad participation in and acceptance of the underlying legal instruments. According to the Swiss view, only a consensual approach could guarantee this. In particular regarding tax agreements, a critical mass of countries is needed to implement the agreement for it to be effective.

The procedure for the drafting of the United Nations Framework Convention on International Tax Cooperation should also be transparent and should, while emphasising that it is an intergovernmental process, also be open to stakeholders from civil society including business sectors.

Finally, the inclusiveness of the process requires also that participation is in fact equally open to all countries. Meetings of the body mandated to draft the United Nations Framework Convention on International Tax Cooperation held in different places could further this goal.