



COMMENTARY PREPARED BY THE AFRICAN TAX ADMINISTRATION FORUM

Comments on the Bureau's Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

General Comments

1. The African Tax Administration Forum welcomes the Zero Draft Terms of Reference (ToR) to the United Nations Framework Convention on International Tax Cooperation released by the Bureau of the Ad Hoc Intergovernmental Committee. We note that the draft has articulated many of the key issues members raised during the first substantive session. To this end, we view the zero draft as a key building block for the final output of the committee due 15th August 2024. ATAF notes that the Zero Draft has not been agreed by all members of the Bureau and therefore calls on members to utilise the opportunity of the 2nd substantive session coming up from 29th July to 16th August 2024 to iron out key differences to produce a robust ToR. To this end, we support the statement submitted by the African Union and the African Group and restate the following specific comments, which we believe would improve the draft.

Specific Comments

2. Our comments
 - a) *Introduction*: We believe that the introduction is necessary to contextualize the work and to properly understand its background. As such, we welcome the inclusion of the preamble in the current draft.
 - b) *Preamble*: the preamble ties the foundation of the convention to its originating resolutions. This, we believe would anchor the framework convention to the many laudable initiatives articulated in those resolutions.

- c) *Objective*: We suggest amending paragraph 7(a) to read “establish the fundamental principles that ensure the full inclusiveness and effectiveness of the international tax cooperation for all parties, including developing countries, in terms of substance and process.”
- d) Principles: with respect to this paragraph, it is suggested that –
 - i) The clause:” ... while respecting the rights to privacy and other fundamental human rights be deleted. This clause causes confusion and does not add any value to the paragraph.
 - ii) A new clause 3 should be inserted: “minimise tax evasion and avoidance.”
- e) *Substantive elements of the Framework Convention*: Parties to the Framework Convention should be at liberty to make commitments on broad-themed issues. The current rendition per paragraph 10 seems to have limited issues to which parties could have commitments. We suggest redrafting this to make the paragraph open-ended, allowing for opportunities for a broader level of commitment during negotiations.
- f) *Capacity building*: [paragraph 11] We suggest a redraft to read “Recognizing that respect for tax sovereignty implies inclusive and effective participation in international tax cooperation anchored on procedures that take into account the different needs, priorities and capacities of all countries to meaningfully contribute to the norm-setting processes, without undue restrictions, and also supports them in doing so, including giving them an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference’.
- g) *Structural elements of the Framework Convention*: We suggest adding an advisory body to the framework's structure. Such a body should have technical supervision of the framework work on behalf of the CoP, which is necessarily high-level. It would sparingly meet to give mandates or approve the work done.
- h) *Specific priority areas to be addressed in early protocols*: we call for prioritising “the taxation of the digital economy” as the early protocol. This is because hope seems to have dimmed for an effective and timely implementation of Pillar 1 Amount A leading countries to start the proliferation of rules to tax the digital economy by way of intruding Digital Service Taxes or some form of significant economic presence rules. As such, prioritising the taxation of the digital economy will be a quick win for all parties as it will stop the fragmentation of international tax rules in this respect and provide respite for countries unable to tax this sector owing to the ineffectiveness of the existing rules.

- i) In Paragraph 15, The reference to the exchange of information for tax purposes should be redrafted to read: “effective exchange of information for tax purposes.”
- j) paragraph 20 of the Zero Draft should be re-drafted to replace the word “should” with “may”. In other words, “throughout its work, the intergovernmental negotiating committee “may” take into consideration the work of other relevant forums”.

Conclusion

3. We believe that this zero draft reflects most of the members' inputs during the first substantive session. It is, therefore, a critical base to start and conclude the committee's assignment as we go into the final session.