

**COMMENTS BY THE AFRICAN GROUP ON THE BUREAU’S
PROPOSAL FOR ZERO DRAFT TERMS OF REFERENCE FOR A
UNITED NATIONS FRAMEWORK CONVENTION ON
INTERNATIONAL TAX COOPERATION**

General Comments

1. The African Group commends the Bureau for providing Member States with a concise zero draft of the Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation. Though the text broadly reflects the comments and concerns expressed by Members States during the first session of the Committee, the African Group believes that some important elements have not been reflected. We therefore wish to highlight these elements. We, therefore, wish to highlight the following:

Introduction

- 2 We believe that the preamble is necessary for contextualizing the work and for proper understanding of the background of the work. The preamble ties the thrust of the convention to its originating resolutions, such as 78/230, 77/244 and 69/313. This, we believe, would anchor the framework convention to the many laudable initiatives articulated in those resolutions. As such, we welcome the inclusion of the preamble in the current draft

Objective

- 3 The objectives are strong and open and provide a solid basis for permanent action under the Convention. While we support the objectives, we wish to propose slight amendments to paragraph 7(a) to read as follows: *Establish fully inclusive and more effective international tax cooperation in terms of substance and procedures and set out the fundamental principles of such cooperation for all parties, including developing countries*”. We suggest this amendment recognizing that the developing countries have been historically excluded in the existing frameworks.

- 4 *We propose the edits to paragraph 7(b) to read as: Establish a system of governance for international tax cooperation capable of identifying and addressing existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State.*
- 5 *We also propose slight edits to paragraph 7(c) to read as follows: Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy certainty, resilience, simplicity and fairness of international tax rules, while addressing tax-related illicit financial flows and other challenges to strengthening domestic resource mobilization.*
- 6 We wish to stress our strong opposition to the inclusion of any element relating to “complementarity” in the objectives. The inclusion of such elements would permanently reduce the Convention to a second-tier instrument filling gaps left by other fora.

Principles

- 7 The guiding principles of the United Nations Framework Convention on International Tax Cooperation should encompass both substantive and procedural elements. Substantively, the principles should aim to avoid double taxation, double non-taxation, tax avoidance, and evasion. They should further economic neutrality and provide a robust framework to prevent profit shifting and harmful tax competition. Special and differential treatment for developing countries, considering their respective development stages, is essential. Additionally, there should be an emphasis on the need for tax certainty, fair allocation of taxing rights, and inclusiveness. The principles must address challenges faced by developing countries in mobilizing domestic resources for sustainable development.

Substantive Elements of the Framework Convention

- 8 Parties to the Framework Convention should be at liberty to make commitments on broad themed issues. Paragraph 10 as drafted seems to have limited issues to which parties could have commitments. We suggest that this

be redrafted to make the paragraph open-ended allowing for opportunities for broader level of commitment during negotiations.

9 Aside from being broad-based, paragraph 10 must include a commitment on IFFs and recovery and repatriation of taxes relating to such illegal transfers. Additionally, it should include reviewing the definition of a permanent establishment to take into account the changing landscape of doing business.

10 Regarding *capacity building*, we propose that paragraph 11 be amended 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*’.

11 On paragraph 12, we propose that the convention should seek to or coordinate all capacity building efforts of the United Nations. This will ensure the effectiveness and inclusiveness of such an effort.

12 On paragraph 13 we propose the inclusion of ‘procedures for development adoption and amendments of protocols.’

Structural Elements of the Framework Convention

13 We suggest the addition of an advisory body to the structure of the framework. Such a body should have technical supervision of the work of the framework on behalf of the CoP which is necessarily high-level and would sparingly meet to give mandates or approve the work done.

Specific Priority Areas to be Addressed in Early Protocols

- 14 We call for prioritization of “tax-related illicit financial flows” “the taxation of the digital economy” and cross-border services as the early protocols. The UN FACTI report found that despite years of efforts by the international community to curb illicit financial flows, they remain a chronic and even growing problem for both developed and developing countries, causing a huge gap in financing investment in sustainable development. Developing countries suffer most deeply, losing billions annually to corporate tax avoidance and other base erosion/ profit shifting practices, tax evasion by the wealthy, corruption and financial crime hence for protocols to curb these harmful practices.

- 15 The taxation of the digital economy as one of the early protocols has become necessary because hope seems to have dimmed for an effective and timely implementation of Pillar 1 Amount A leading countries to start 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, prioritizing the taxation of digital economy will be a quick win for all parties as it will stop 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.

Approaches and Timeframe

- 16 All countries share the common goal that there is the need for a coherent and stable international tax system that is acceptable to as many participants in the global economy as possible. We reiterate that UN rules of procedure are inherently aimed at consensus but are built on the recognition that the majority of countries need to be able to address issues, if differences prevail. As a subsidiary body of the General Assembly, this principle guides the work of this Committee as reflected in Annex I of A/AC.295/2024/2. We therefore reiterate our position that the rules of procedure of the Assembly apply (A/520/Rev.20) should continue to apply to any subsidiary body of the General Assembly.

- 17 Developing countries suffer most from the current financing gap, and the convention should be developed as early as possible to help reduce this gap. We believe 18 months for developing the convention and the early protocols is sufficient.
- 18 The early protocols should be developed simultaneously with the convention and adopted together.

Resources to support the work of the negotiating body

- 19 We request the Secretary-General to provide the intergovernmental negotiating committee with the necessary facilities and resources to support the work of the Committee. We stress that these resources must include a technical secretary from the Department for General Assembly and Conference Management (DGACM) as well as a substantive secretariat from DESA.

Conclusion

- 20 We emphasize that promoting inclusive and effective international tax cooperation remains a critical prerequisite to the achievement of the SDGs, since it enables countries to effectively mobilize their domestic resources. We are committed to strengthening the inclusiveness and effectiveness of tax cooperation at the United Nations. We commend the work of the Bureau of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. We look forward to the successful completion of the process towards developing a United Nations framework convention on international tax cooperation and call upon all countries to engage constructively.