

This draft does not necessarily represent the unanimous opinion of all members of the Bureau.

[Draft zero terms of reference for a United Nations framework convention on international cooperation in tax matters]

Commented [u1]: In general terms, the Plurinational State of Bolivia (EPB) supports the content of the document and we see that it is possible to reach consensus that allows progress in international tax cooperation based on fundamental principles with the inclusion of all member states.

Introduction

[Note: The purpose of this introduction to the mandate of the zero project is to provide readers with a brief overview of the background and mandate of the Special Committee. The introduction provided the context for the draft terms of reference. The first substantive part of the mandate is the following section on the Preamble to the UNFCCC.]

1. In adopting resolution 78/230, entitled "Promoting inclusive and effective international cooperation in the field of taxation at the United Nations", the General Assembly emphasized the need to elaborate a United Nations framework convention on international cooperation in tax matters in order to strengthen international cooperation in the field of taxation and to make it fully inclusive and more effective.
2. The General Assembly recognized in the resolution that the development of a framework convention will also help accelerate the implementation of the Addis Ababa Action Agenda on Financing for Development and the 2030 Agenda for Sustainable Development.
3. Accordingly, the General Assembly established an ad hoc open-ended intergovernmental committee led by Member States to draft the terms of reference for a United Nations framework convention on international cooperation in tax matters.
4. The General Assembly further requested the Ad Hoc Intergovernmental Committee to submit to it at its seventy-ninth session a report containing the draft terms of reference for a United Nations framework convention.
5. The Ad Hoc Intergovernmental Committee, having completed its work in accordance with this mandate, now recommends to the General Assembly the consideration of the following draft terms of reference for the negotiation of a United Nations framework convention on international cooperation in tax matters:

Preamble

6. The text of the framework convention should reflect the following General Assembly resolutions:
 - 78/230 of 22 December 2023 on "Promoting inclusive and effective international cooperation on taxation at the United Nations";
 - 77/244 of 30 December 2022 on "Promoting inclusive and effective international tax cooperation at the United Nations"; and
 - 69/313 of 27 July 2015 on the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

Objectives

7. A United Nations framework convention on international cooperation in tax matters should include a clear statement of its intentions. In this regard, it should:

- a. To establish the fundamental principles that guarantee the full inclusiveness and effectiveness of international tax cooperation in terms of content and process.
- b. Establish a governance system for international tax cooperation capable of responding on an ongoing basis to current and future tax and tax-related challenges, while respecting the fiscal sovereignty of each Member State.
- c. Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and equity of international tax rules, while addressing illicit tax-related financial flows and other challenges to strengthen domestic resource mobilization.

Principles

8. A United Nations framework convention on international cooperation in tax matters should include a clear statement of its guiding principles.

9. Efforts to make international tax cooperation fully inclusive and more effective should:

- have a universal approach and scope and take fully into account the different needs, priorities and capacities of all countries, in particular countries in special situations;
- adopting a holistic and sustainable approach to development that encompasses economic, social and environmental policy aspects in a balanced and integrated manner;
- establish rules that are as simple and easy to apply as the subject matter allows;
- increase certainty for taxpayers and governments;
- be flexible, resilient and agile enough to ensure equitable outcomes as technology and business models and the landscape of international tax cooperation evolve;
- recognising that each Member State has the sovereign right to decide on the policies and practices of its internal tax system, and the responsibility to ensure that such policies and practices do not undermine the effectiveness of the tax base or the system of other Member States;
- ensuring equity in the allocation of tax rights within the framework of the international tax system that contributes to achieving sustainable development;
- demand transparency and accountability from all taxpayers, while respecting the rights to privacy and other fundamental human rights.

Commented [u2]: We believe that the scope of the term "countries in special situations" should be specified

Commented [u3]: Since the policies adopted by any Member State must take into account the guiding principles of global taxation, it is suggested that the text "and the responsibility to ensure..."

Commented [u4]: We believe that this sentence should be deleted, because the object of the document deals with aspects of a fiscal nature.

Substantive elements of the Framework Convention

10. The framework agreement should include commitments on:

[Equitable allocation of taxing rights, including fair taxation of multinational enterprises; effective taxation of high-net-worth individuals; ensure that fiscal measures contribute to addressing environmental challenges; transparency and exchange of information for tax purposes; and prevention and effective resolution of tax disputes.]

Capacity building

11. Recognizing that respect for fiscal sovereignty implies that inclusive and effective participation in international tax cooperation requires procedures that take into account the different needs, priorities and capacities of all countries to contribute meaningfully to and support rule-setting processes, without undue restrictions, in doing so, including giving them the opportunity to participate in the establishment of programmes, debates and decision-making, either directly or through groupings of countries, according to their preference.

12. The framework convention should therefore include provisions regarding the entity or entities with primary responsibility and funding to support Member States, especially developing countries, in their efforts to build capacity on relevant international tax practices and related issues in order to ensure that they have adequate capacity to participate effectively in international tax cooperation and to implement the convention frame.

Structural elements of the Framework Agreement

13. The framework convention should also include the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic legislation; examination and verification; exchange of information (for the implementation of the Framework Convention); data collection and analysis; financial resources and mechanisms; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for the amendment and adoption of protocols.

Specific priority areas to be addressed in early protocols

14. The first protocols on a small number of specific priority areas should be developed simultaneously with the negotiation of the framework convention. Listed below are the specific priority issues that need to be addressed through these early protocols:

the taxation of the digitalised and globalised economy; taxation of income derived from cross-border services; illicit financial flows related to taxes; prevention and resolution of tax disputes; and the taxation of high-net-worth individuals.

Commented [u5]: We understand how complex it could be to move forward in parallel with the documents, so we suggest prioritizing in the early protocols the topics of interest to the states, such as "Taxes on high-net-worth individuals and exchange of information", and establishing that the other topics will be negotiated in other protocols, following a work schedule that should not be extended in time due to their importance.

15. The following additional topics could be the subject of future protocols under the terms of the framework convention:

fiscal measures on environmental and climate challenges;

exchange of information for tax purposes;

mutual administrative assistance in tax matters; and

harmful tax practices.

Approaches and timelines for negotiation

16. The framework convention should be drawn up by a negotiating committee led by the member States, in accordance with established practice. The intergovernmental negotiating committee would meet in New York and initially in 2025 and 2026 would meet in [number] of sessions, each lasting [number] working days, and would make every effort to complete its work and submit the final text of the framework convention and the first protocols to the General Assembly for consideration [at its [81st] session].

Commented [u6]: We believe it is necessary to consider the possibility that the initial discussions can also be carried out virtually with simultaneous translation mechanisms in the official language of the countries.

17. The intergovernmental negotiating committee should start negotiating the first protocols described above at the same time as the negotiation of the framework agreement begins, with the aim of completing the negotiation of these protocols no later than six months after the conclusion of the negotiation of the framework agreement, in order to optimize coordination between the documents.

18. The Bureau of the Intergovernmental Negotiating Committee should consist of a chairperson, three vice-chairmen and a rapporteur, elected on the basis of equitable geographical representation.

19. Member States should participate fully in the negotiation of the framework convention and strive to ensure the continuity of their representation.

20. In its work, the intergovernmental negotiating committee should take into account the work of other relevant forums, potential synergies and existing instruments, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels.

Commented [u7]: Considering that we are negotiating a new international legal instrument, we suggest changing the word "should" to "could".

Resources to support the work of the negotiating body

21. The Secretary-General should be requested to provide the intergovernmental negotiating committee with the necessary facilities and resources to support its work.

22. Member States and other relevant stakeholders in a position to do so should be encouraged to assist in ensuring the full and effective participation of developing countries, in particular the least developed countries, in the negotiation of the framework convention, including through travel and local costs and capacity-building.

