



**To:**

**Mr Ramy M. Youssef**

**Chair of the Ad Hoc Committee**

Riyadh, 21 June 2024

**Ref.: Comments on the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation**

Dear Mr Youssef,

We thank you for the opportunity to comment on the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (hereinafter, the “Zero Draft”). There is a common consensus in the international tax community that the path toward international tax cooperation requires more transparency, simplicity, and inclusivity, especially, regarding developing countries. In this regard, the work of the Ad Hoc Committee you chair and the subsequent negotiations on the Framework Convention will be fundamental to establishing the basis for such an institutional structure.

As a fundamental issue, we believe that a Framework Convention should not extend beyond what is necessary, avoiding unnecessary details, and serving as a principled guidance for the construction of a more inclusive international tax system. In this regard, the Zero Draft presented to the public represents an important first attempt, which, nonetheless, requires some amendments to better accomplish this role. As follows, we provide some specific comments on the Zero Draft following the structure of the document:

## I. Preamble

No comments.

## II. Objectives

We appreciate the effort to set up several objectives for the Framework Convention. However, we strongly believe that having a single and clear objective is more important right now. This objective, in our view, should be simply to **guarantee a fair, transparent, and equitable international tax systems that respects the individual capacity of countries to determine their fiscal affairs according to their needs**. Providing such a clear and concise objective will strengthen the role of the Framework Convention as the core international instrument in tax matters, which we presume is indeed the aim pursued by the Ad Hoc Committee.

## III. Principles

Several principles stated in the Zero Draft overlap with each other as well as with some objectives of the Zero Draft. Therefore, we propose to focus on **three key principles** as driving forces of the Framework Convention, namely **simplicity, flexibility, and transparency**.

As we have noted in previous stages of this process, simplicity and ease of administration are crucial to building up a robust international tax system. Current experiences from the OECD Pillar One and Two demonstrate that **simplicity** is generally overlooked or underestimated, posing serious challenges for countries, especially for developing countries. Similarly, we could not argue strongly enough that a truly inclusive international tax cooperation cannot be achieved without a degree of **flexibility**, that is, recognising the inherent differences among countries, both between developed and developing countries, as well as among developing countries themselves. In this regard, a more flexible debate will provide the opportunity for countries to address global tax concerns, but without renouncing entirely to the economic reality of their own territories.

Finally, **transparency** appears as another cornerstone in a system that aims to guarantee fairness and equity. Indeed, overcoming the issues of transparency in the decision-making process that is present in current international tax reforms is also a challenge because it increases administrative costs for countries around the world, especially for developing countries that lack capacity building. It also puts at risk taxpayers' rights.

Reducing the focus to three key principles provides, in our view, a better understanding of what the role of the Framework Convention is, namely, to guarantee a fair, transparent, and equitable international tax system that respects the individual capacity of countries to determine their fiscal affairs according to their needs.

#### **IV. Substantive Elements of the Framework Convention**

As for the substantive elements, we agree with most of them. However, there are two considerations that we suggest. Firstly, although speaking about a “fair” allocation of taxing rights, including equitable taxation of MNEs, is sound and sensitive, the concept of **fairness** in taxation turned out to be controversial. As such, we consider that using a concept that might be out of consensus may put at risk the valuable steps achieved thus far at the UN. Instead, we propose to refer to an “adequate” or “equitable” allocation of taxing rights, which may better reflect the idea of an international tax system that rejects different forms of injustices, as well as the tax policy trade-offs associated with different agreements, including the taxation of MNEs. Secondly, we do not consider necessary to include the “effective taxation of high-net worth individuals” as a substantive element of the Framework Convention. Indeed, we believe that adding this element restricts the flexibility that countries should have to address this matter.

#### **V. Capacity Building**

As recognised in the Zero Draft, capacity building is fundamental to prevent the mistakes of the past and to construct a truly inclusive and effective cooperation in tax matters. In this regard, we agree with highlighting specific entities with “primary responsibilities” for funding and

supporting Member States, **but only as a reference**. Otherwise, we risk facing again the same problems of concentration of the international tax debate. Indeed, an important part of the countries' position in international tax matters starts from the influence derived from capacity building offered by external actors. Therefore, even though highlighting some institutions as primary actors may serve the purpose of imposing a minimum international obligation, it may risk becoming a threshold that cannot be overpassed by the Member States and should certainly be avoided.

## **VI. Structural Elements of the Framework Convention**

We consider two elements of the structural elements proposed as fundamental. First, and foremost, **dispute settlement**. In this regard, we believe that dispute settlements should not only be focused on the relationship between the taxpayer and the tax administration but also on the relationship between States. That is, the Framework Convention should be capable to offer a mechanism by which the international tax obligations from a country could be controlled by other countries through specific legal mechanisms. This is something that the current international tax system, and particularly, tax treaties (including the OECD Multilateral Instrument), do not offer. Protocols could serve to establish the details of this mechanism. Second, we believe that the role of the **Conference of the Parties (COP)** is fundamental to ensure both inclusivity and effectiveness in international cooperation. As such, we consider it necessary not to restrict the COP to Member States only and extend it to other actors, most notably intergovernmental organisations. In addition, and following our position in the past, we believe that the COP could also take the lead on the monitoring and implementation of the international measures adopted within the body with the aim that future global tax policy decisions are both designed and taken within this new global tax forum.

## **VII. Specific Priority Areas to be Addressed in Early Protocols**

We consider that the specific priority areas proposed, and which are aimed to be addressed simultaneously with the negotiations of the Framework Convention should be reduced. Most notably, we have noticed that some of the specific areas either overlap with each other or

demand serious attention at a time when the priority should be in the negotiations for a solid Framework Convention that may serve as a pillar for the international tax system. Therefore, we suggest that the main specific priority areas are reduced to three, namely:

- 1. Taxation of business profits in a digitalised economy**
- 2. Tax competition and tax incentives**
- 3. Dispute resolutions and exchange of information**

These three specific priority areas attend to the more urgent tax matters for developing countries, and they align with the objective and principles that we consider the Framework Convention should ultimately pursue. Firstly, the **taxation of business profits in a world that is highly digitalised** is a challenge that persists regardless of the international tax efforts to address it in the past. The OECD Pillar One project does not only have little political chance to gain worldwide approval, but in practice, it does not truly address the original concern among developing (market) countries, which is how to tax business profits in the absence of a physical presence. Indeed, such a project evolved from this original question to the idea of taxing highly profitable tech companies, reducing the opportunities for market countries to get allocated new taxing rights, and potentially, new tax revenues. The unilateral reactions of countries around the world are, in our view, not only a reaction to the OECD proposal but indeed the recognition that this original concern has been forgotten.

Secondly, developing countries will be largely impacted by the adoption of the OECD Pillar Two around the world, posing serious challenges in the way in which they attract foreign direct investment (FDI) using, among other tools, their corporate income tax systems for this purpose. There are indeed several presumptions from the OECD as to how the project will impact developing countries, including the assumption that corporate income tax incentives play an “evil” role in attracting FDI, the idea that all developing countries can seamlessly transition from CIT competition to other forms of tax and non-tax competition, and most notably, the notion that supporting or opposing the OECD Pillar Two project could either boost or diminish

their tax revenues.<sup>1</sup> This leaves developing countries in an extremely challenging position, making policy decisions regarding their corporate tax incentives that may compromise them in the future. Therefore, the issues of tax competition and tax incentives should be at the core of the international tax debate. However, this should not be addressed under the classic, and sometimes pejorative, qualification of “harmful tax practices”, as suggested in the Zero Draft. **Instead, we suggest that these matters are addressed in a holistic manner, which includes the broader idea of tax competition and tax incentives.**

Finally, we strongly believe that **dispute resolutions and exchange of information** should be considered together as a specific priority area for protocols. This is aligned with the structural elements of the Framework Convention, particularly, regarding the design of a mechanism by which the international tax obligations from a country can be controlled by other countries through specific legal mechanisms. We would propose to establish this as a structural element, leaving the details of the mechanism to specific protocols. Similarly, we suggest that the exchange of information for tax matters, including administrative assistance among tax administrations, is addressed holistically. This could allow those other specific areas stressed in the Zero Draft, such as tax-related illicit financial flows and mutual administrative assistance, to be considered together.

### **VIII. Approaches and Time Frame for Negotiations**

No comments.

### **IX. Resources to Support the Work of the Negotiating Body**

No comments.

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<sup>1</sup> In this regard, see Leopoldo Parada, *Global Minimum Taxation: A Strategic Approach for Developing Countries*, Columbia Journal of Tax Law 15:2 (2024).



We thank you again for the opportunity to provide our feedback on the Zero Draft, and we hope that our inputs may serve in the important negotiations ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Leopoldo Parada", written over a horizontal line.

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A handwritten signature in black ink, appearing to read "Manel Bondi", written in a cursive style.

**Ms Manel Bondi**  
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**Disclaimer**

This work was commissioned by the Digital Cooperation Organization (DCO) to Dr Leopoldo Parada, Associate Professor of Tax Law at the University of Leeds School of Law and prepared in collaboration with Ms. Manel Bondi from the DCO General Secretariat. The findings, interpretations, and conclusions expressed herein do not necessarily reflect the views of DCO's Member States, either individually or jointly.