

INDIA'S INPUTS ON THE ZERO DRAFT OF THE TERMS OF REFERENCE FOR A UNITED NATIONS FRAMEWORK CONVENTION ON INTERNATIONAL TAX COOPERATION

I. General comments

1. India welcomes the zero draft of the terms of reference (“**TORs**”) for a “United Nations Framework Convention on International Tax Cooperation (“**UNFCITC**”). We are broadly in agreement with the structure and organization of topics in the TORs, as well as most of the specific subjects included under these topics.

2. We would reiterate our submission made prior to the 1st substantive session of the Ad Hoc Committee (“**AHC**”), that the TORs should define the broad contours for the UNFCITC. In our view, at this stage, we need to identify tax related issues that are of the greatest concern to a large majority of Member States and include those in the TORs. However, we do not need to prescribe technical solutions to such problems at this stage. That would be the mandate of future intergovernmental committees which would negotiate the UNFCITC and its protocols.

3. Further, in view of the limited time available to us to draft the TORs, we must focus more on substantive items, rather than procedural aspects relating to negotiation of the UNFCITC. This is not to undermine the importance of procedural aspects, but merely to highlight that we would have other opportunities, such as in the upcoming General Assembly (GA) session or in the organizational session of the next intergovernmental committee, to address these procedural issues.

4. The zero draft fleshes out the topics included in the “skeleton” of the TORs, which was discussed by Member States at the 1st substantive session as part of the substantive scoping exercise. We feel that the draft strikes the right balance between detail and flexibility, and we look forward to further discussions on this draft at the next substantive session.

II. Specific comments on the draft

5. **Introduction:** We support the introductory paragraphs in their present form, as they establish the context for work of the AHC, including the UN GA resolution 78/230 and the Addis Ababa Action Agenda on Financing for Development.

6. **Preamble:** Paragraph 6 of the zero draft states that the “*text of the framework convention should be reflective of the following General Assembly resolutions..*”, and specifies UN GA resolutions 78/230, 77/244, and 69/313 in the list of such resolutions. While we support the reference to these resolutions, it may be useful to specify in the TORs that such resolutions shall be referenced in the preamble of the UNFCITC, which shall set the context for negotiation of the UNFCITC. We propose that the first sentence of paragraph 6 of the zero draft may be reworded as follows:

“The United Nations framework convention on international tax cooperation shall include a preamble which shall reflect the following General Assembly resolutions...:”

7. **Objectives:** Paragraph 7 of the zero draft states that the UNFCITC should include a clear statement of its purposes. However, while subparagraphs (b) and (c) in this paragraph relate to specific objectives, such as establishing a system of governance, or establishing an inclusive system for international tax cooperation, subparagraph (a) is more vaguely worded, and refers to “*set(ing) out the fundamental principles that ensure the full inclusiveness and effectiveness of international tax cooperation in terms of substance and process*” (emphasis added). Further, the use of the word “principles” here creates some confusion, as “Principles” is also a separate section in the zero draft. To avoid ambiguity and ensure that subparagraph (a) reflects a clear statement of purpose, we propose the following modification to subparagraph (a) of paragraph 7:

“a. Establish a framework that ensures the inclusiveness and effectiveness of international tax cooperation in terms of substance and process”

This would also align the primary objective of the UNFCITC with the topic of UN GA resolutions 77/244 and 78/230, namely “Promotion of inclusive and effective international tax cooperation at the United Nations”.

Also, in subparagraph (c), we note that the last sentence refers to “addressing tax- related illicit financial flows and other challenges to strengthening domestic resource mobilization”. Here, we feel that specifically mentioning tax-related illicit financial flows may not be necessary, as the language of this section is generic in nature, and specifically highlighting one challenge may indicate that it is more important than the others for domestic resource mobilization, which may not necessarily reflect the views of the AHC. Therefore, while “tax-related illicit financial flows” is an important issue, which is highlighted elsewhere in the zero draft also, we propose removing it from paragraph 7, and rephrasing subparagraph (c) of paragraph 7 as follows:

“c. Establish an inclusive, fair, transparent, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing the challenges to strengthening domestic resource mobilization.”

8. **Principles:** We strongly support paragraph 8 of the zero draft, which states that “A United Nations framework convention on international tax cooperation should include a clear statement of its guiding principles.” Further, paragraph 9 lists some broad principles that the UNFCITC can adopt, which includes, as the last item “*transparency and accountability of taxpayers, while respecting the rights to privacy and other fundamental human rights*” (emphasis added). Here, the phrase “other fundamental human rights” seems vague and may be subject to unintended interpretations that could potentially thwart this principle. We wholeheartedly support the principle that taxpayers’ rights must be respected. For this purpose, India also has a taxpayers’ charter which lays down the government’s commitments towards the taxpayer, as well as expectations from the taxpayer. However, the phrase “other fundamental human rights”, unless specifically defined, may create an unintended hindrance, especially in tax-related exchange of information, which in our view, is the primary thrust of this clause in the zero draft. Further, the phrase “other fundamental human rights” may mean different things in various jurisdictions, which would lead to interpretational challenges. Therefore, to avoid ambiguity, we propose to reword this clause as follows:

“-require transparency and accountability of all taxpayers, with adequate safeguards to protect taxpayers’ rights and confidentiality”

9. Substantive elements of the framework convention: We note that the head “substantive elements of the framework convention” in the zero draft identifies some topics for commitments in the UNFCITC. We support the topics included in this section, as they reflect some of the most pressing issues in international taxation at present. However, we propose to rename this section as “**Commitments in the framework convention**”, as this section presently contains only topics for commitments, and no other substantive item.

10. Capacity building: Paragraphs 11 and 12 of the zero draft discuss capacity building as a separate section, which in our view suitably underlines its importance in international tax cooperation. We support these paragraphs in the zero draft, in their present form.

11. Structural elements of the framework convention: We understand that the elements included in paragraph 13 under the head “structural elements of the framework convention” are identical to those included as Annex-1 to the draft skeleton shared with Member States prior to the 1st substantive session of the AHC. We feel these are important items, and several of them were included in India’s written inputs shared earlier, such as relationship with other agreements, instruments, and domestic law, governance structure (such as a Secretariat and Conference of the Parties), implementation arrangements, etc.

12. Specific priority areas to be addressed in early protocols: Paragraph 14 of the zero draft notes that “early protocols on a small number of specific priority areas should be developed simultaneously with the negotiation of the framework convention”. We support this proposal, as UN GA Resolution 78/230 calls upon Member States to consider simultaneous development of early protocols on two specific subjects, and inclusion of the same in the TORs would be in pursuance to this resolution. The priority areas identified for early protocols in paragraph 14 includes the two topics from Resolution 78/230 – namely tax-related illicit financial flows, and taxation of income derived from cross-border services and some other topics. India supports the inclusion of these as priority areas for early protocols, based on their importance to inclusive and effective international tax cooperation.

Here, we note that the phrase “small number” signifies that a limited set of subjects can be taken up for negotiation of early protocols. However, in addition to specifying these subjects, we believe it is also important to ensure that at the very least, the topics identified in operative paragraph (OP) 6 of Resolution 78/230 – namely tax-related illicit financial flows, and taxation of income from cross-border services – should be taken up by the committee negotiating the UNFCITC for simultaneous development of early protocols. We accordingly propose to add the following sentence at the end of paragraph 14 of the zero draft:

“The intergovernmental committee that negotiates the framework convention should, at a minimum, develop protocols on tax-related illicit financial flows, and taxation of income from cross-border services, simultaneously with the framework convention.”

Further, paragraph 15 of the zero draft identifies additional topics for “future” protocols, which are to be distinguished from “early” protocols. India supports the inclusion of these topics for future protocols. Additionally, to cater to the possibility that some of the priority areas included in paragraph 14 (beyond the minimum number proposed above) may not be concluded through early protocols, the following sentence may be added at the end of paragraph 14:

“In case the committee negotiating the framework convention is unable to negotiate early protocols on one or more priority areas identified in paragraph 14, those priority areas can be addressed through subsequent protocols along with protocols on topics identified in this paragraph.”

13. Approaches and time frame for negotiations: Paragraphs 16 to 20 of the zero draft discuss approaches and time frame for negotiation of the UNFCITC and early protocols. We support the proposal in paragraph 16 that the UNFCITC should be negotiated over a two-year time frame and complete its work in time for it to be considered by the GA at its 81st session.

Further, paragraph 17 of the zero draft prescribes that negotiation of early protocols should be completed within 6 months from the conclusion of negotiations of the UNFCITC. As discussed at the 1st substantive session, we believe this is a reasonable timeline and can be adhered to, especially if we are limiting the early protocols to a “small number”.

Further, paragraph 18 states that the bureau of the intergovernmental negotiating committee for the UNFCITC shall consist of only 5 members – 1 Chair, 3 Vice-chairs, and a rapporteur. In our opinion, only five countries in the bureau would make it too unrepresentative and would not serve the purpose of the bureau. We propose to either not specify the bureau strength in the TORs or increase it to include **at least 4 Member States from each of the five regional groups**, like for the present AHC. We feel that a large (though not unreasonably large) bureau would be important, as the next intergovernmental committee that would negotiate the UNFCITC will likely discuss complex technical topics that would require support from its bureau. We would thus need a greater spread of expertise and broad-based views from the bureau.

Finally, we support paragraph 19 and 20 of the zero draft. Paragraph 20 correctly identifies “*taking into consideration the work of other relevant forums..*” as an approach rather than a principle or objective, and is in our opinion, suitably placed in the zero draft of the TORs.

14. Resources to support the work of the negotiating body: We endorse the text in paragraphs 21 and 22 of the zero draft. India has consistently maintained that a well-staffed and adequately resourced Secretariat is critical to the work of the intergovernmental committee that would draft the UNFCITC. To that end, it is important for Member States and other stakeholders to assist developing countries, particularly the least developed countries, in negotiation of the UNFCITC. A similar paragraph was also agreed in the text of “Annex-I” to the report of the organizational session of the present AHC.