



**AD HOC COMMITTEE TO DRAFT TERMS OF REFERENCE,
UNITED NATIONS FRAMEWORK CONVENTION ON INTERNATIONAL TAX
COOPERATION,**

WRITTEN COMMENTS FROM ISRAEL

June 2024

Israel thanks the Chair for the Zero Draft Terms of Reference for a United Nations Framework Convention on International (ToR), and we appreciate the opportunity to provide written comments.

General Comments

As the ToR guide our future work, it must foster a constructive and inclusive basis for the negotiations that would ensure that the framework enjoys the consensus of all Member States. The following two points are essential for Israel and we wish to see them reflected in the ToR:

1. Consensus-based decision-making process: It was evident during the first session of negotiation that defining the decision-making process is crucial. We are concerned about engaging in a process that might compromise states' sovereignty and jeopardize their right to tax. We thus reiterate the importance of a consensus-based process that will ensure an inclusive and effective process and lead to an agreed outcome. It is essential that the ToR includes a clear reference to a consensus-based decision-making process in the negotiations and the adoption of the framework convention.
2. Legal status of protocols: it is essential that the ToR will clarify the legal status of the protocols of the framework convention. In our view, the ToR shall state all protocols will be optional. Once their legal status is established, we surmise that participants would be more willing to consider early protocols and their simultaneous development.

Defining the boundaries of the process will determine the degree of flexibility and will help fostering solutions to challenges that may arise during the negotiations. Therefore, the decision-making process and optionality of protocols must be agreed in advanced.

The following comments address the specific themes and paragraphs of the ToR zero draft:

- Respect existing commitments and other forums: We stress the importance of respecting the commitments of countries and the work of other forums. This has been a repeated point throughout our work on the framework convention and during the initial negotiation rounds. While article 20 mentions that the committee should "take into consideration" the work of relevant forums, we find this language insufficient. We propose strengthening this article to reflect stronger commitment to align the work with existing processes, commitments and forums.
- Mandate for Informing Analysis: The work of the AHC should be guided and informed by reliable economic and technical analysis. The ToR should include a mandate for such an analysis as part of the negotiation process.
- Transparency and Involvement: We request that the work of the member state-led negotiating committee be shared with all states and made transparent throughout the process to facilitate broader involvement. Moreover, decisions should be taken by a forum of all member states.
- Paragraph 7: We object to including "establish a system of governance" as an objective. Our mandate should focus on establishing a "framework" for international cooperation.
 - sub para. b: In addition to the inclusion of "respecting the tax sovereignty of each Member State", we wish that the objective will also mention the work of the OECD on the Two Pillar initiative, which was agreed by more than 140 states.
 - sub para. c: The text refers to an "International tax system". We do not think the aim of this framework is to establish an international tax system. Rather, tax systems are subject of domestic law. Our aim should be to build a tax cooperation framework that would improve and complement domestic tax systems.
- Paragraph 8: We prefer to allow more discretion in the negotiation process, as not all principles listed may be essential for a successful solution. To avoid being too prescriptive and reflect this flexibility, we suggest replacing "should" with "could".
- Paragraph 9: We request replacing the phrase "Undermine the effectiveness of the tax base or system of any other Member State" (the 6th bullet) with less ambiguous language. Any incentive to promote investment, policy to promote sustainable development or other positive

objective could potentially undermine the tax base of another country while effectively reaching the goal in others. In a broader sense, any system for elimination of double taxation inherently undermines the effectiveness of another tax system.

- Paragraph 10: It is premature to state that the framework convention "should include commitments" without knowing the outcome of negotiations. To avoid prejudging the outcomes of the negotiations, we suggest avoiding determining the nature of commitments, including potential cooperation on issues beyond those listed in the ToR.
- Paragraph 14 - early protocols: We oppose discussion of protocols before the legal and procedural rules governing the process and substance are established. Parallel work on protocols along with the convention would also be difficult for many delegations who face resource constraints. This has been flagged as an area of concern for many countries.

In addition, as in Paragraph 8, We prefer to leave more discretion to the negotiation process and avoid prescriptive language. We propose replacing "should" with "could".

In particular, we object to an early protocol on taxation of digitalized and globalized economy. This has been thoroughly discussed by the Inclusive Framework and a Two Pillar Solution was agreed upon. Many states enacted new legislation according to this solution and we must allow time for current mechanism before trying to find a different solution.

We prefer that the work on prevention and resolution of tax disputes, which has been addressed in other frameworks, will not take form as a separate protocol but rather expand existing standards. In any case, we do not support the development of a binding protocol regarding the prevention and resolution of tax disputes.

- Paragraph 17: Specifying the timeframe for the protocols – please see our comment regarding paragraph 14 – the work should not be parallel, but sequential.
- Paragraph 19: Member State-Led Negotiating Committee: We should clarify whether these committees include representatives from all Member States or the proposed composition of representatives.