

Submission by Italy
Comments to the Zero Draft Terms of Reference
For a United Nations Framework Convention
On International Tax Cooperation

Foreword

Italy confirms its strong commitment in supporting and improving multilateral tax cooperation with a broad participation of developing and developed countries and will continue to ensure any active cooperation to the works relating to the proposed United Nations Framework Convention on International Tax Cooperation.

Italy believes that the Framework Convention should aim at building on the achievements already existing in international tax cooperation.

With this premise, Italy submits the following comments on the “zero draft” Terms of Reference.

General issues

- Italy reiterates the need to build on the existing achievements of the international tax cooperation and work in other *fora*. Otherwise, the establishment of new competing streams of works and the duplication of the global tax standards would increase the risk of fragmentation, with the result of unstable and unpredictable international tax rules. New double standards would entail less legal certainty, possible double taxation, as well as an overall negative impact on cross border investments.

Therefore, although the issue has been debated in the first session, Italy strongly reiterates the importance of ensuring complementarity with the existing work and achievements. To this aim, Italy also asks to move the concept now included in paragraph 20 (*Approaches and time frame for negotiations*) of the “zero draft”, to paragraph 9, in the context of the “*Principles*”.

- Under the section titled “*Substantive elements of the Framework Convention*”, paragraph 10 of the “zero draft” ToR provides that the Framework Convention should include *commitments* on a number of topics listed in the same paragraph, including *e.g.* taxation of multinational enterprises. Italy would like to stress that these commitments may possibly contradict other longstanding political commitments and engagements

that have already been taken in other *fora*, such as on the OECD/G20 Two-Pillar Solution. Also, the proposed early protocols listed under paragraph 14 include topics that may conflict with the mentioned longstanding political commitments already expressed in other *fora*.

- The “zero draft” ToR does not address the key aspect of the decision-making rules under which the Framework Convention will be negotiated. Italy reiterates that the decision-making rules should strive for consensus, since international tax rules cannot be imposed by a majority over a minority of member States.
- As far as early protocols are concerned, Italy supports to proceed through a sequential approach. Paragraph 14 of the ToR provides that early protocols should be developed simultaneously with the negotiation of the Framework Convention. A similar provision is provided in paragraph 17. Italy believes that there are instead sound reasons in favour of a sequenced or staged approach, and strongly advocates the Framework Convention be negotiated before developing early protocols. In fact, the legal obligations and the legal consequences arising from the Framework Convention must be clarified before entering into negotiations of protocols. One key aspect, for example, is whether the adoption of protocols will be mandatory or optional and, in the latter case, how *optionality* can be consistent with the *commitments* required under the Framework Convention.
- In addition, Italy considers that the negotiation of protocols should include two stages: scoping and analysis. While a preliminary discussion on the scope of protocols could be made during the negotiation of the Framework Convention, we deem it essential that a thorough impact analysis be made before drafting protocols.
- The ToR should consider not only protocols, but also other instruments, such as for example exchange of best practices and recommendations, that can be more appropriate and effective in addressing some specific areas of work and can ensure sufficient flexibility to the future negotiating committee.
- Following a sequential approach, Italy believes that priority should be given to issues for which the enhancement of international tax cooperation can effectively contribute to the domestic resource mobilization for developing countries.

Further specific issues

In relation to the section on *Objectives*, in paragraph 7, point b), Italy reiterates its preference to replace the expression “*system of governance*” with the word “*framework*”.

On the specific priority areas to be addressed in early protocols, mentioned in paragraph 14 of the “zero draft” ToR, Italy underlines the following:

- taxation of the digitalized and globalized economy and taxation of income derived from cross-border services are areas that are more likely to create divergencies with longstanding political commitments already expressed in other *fora*;
- the area of tax-related illicit financial flows is not defined, and, to date, it is not clear what kind of issues should be addressed by a protocol;
- on high-net worth individuals, Italy is of the opinion that this work should be focused on, and limited to, ways to improve tax transparency and exchange of information that could be used by member States to tax their high-net worth resident individuals, according to their respective domestic tax laws.

Italy stands ready to continue to engage constructively on the proposed United Nations Framework Convention on International Tax Cooperation.