

Japan’s Written Inputs to the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

At the outset, we would like to express our appreciation to the Chair of the Ad Hoc Committee (the “Committee”) to Draft Terms of Reference (the “ToR”) for a United Nations Framework Convention on International Tax Cooperation (the “Convention”) for giving us the opportunity to provide written inputs to the zero draft of ToR. We would like to make some comments which we hope will help the Committee’s subsequent work.

As general comments, we would like to emphasize that the ToR should ensure inclusive and effective participation and reflect diverse views. **In this regard, it is essential to expand the membership of the negotiation body to include the participation of non-state jurisdictions in the negotiation of the Convention given their tax autonomy, as well as to have three co-chairs in the negotiation body. It is also critical to make our best efforts to reach consensus, so that we can ensure broadest possible participation in the convention. In addition, as we agreed in the first session, improving domestic resource mobilization (“DRM”) should be incorporated in the chapeau of the Convention, because strengthening DRM is one of the explicit targets of the SDGs.**

Based on the general ideas, we would like to provide line-by-line comments as follows:

Preamble

- We suggest removing “77/244 of 30 December 2022 on “Promotion of inclusive and effective international tax cooperation at the United Nations”; and”, as well as “69/313 of 27 July 2015 on the Addis Ababa Action Agenda of the Third International Conference on Financing for Development”. We think a reference to 78/230 would be sufficient, because the resolution cites 77/244 and 69/313.

Objectives

- In paragraphs 7(b) and 7(c), “system of governance” and “international tax system” should be replaced with “framework” in alignment with the resolution 78/230.
- In paragraph 7(b), “with due consideration to the value of coherent and consistent international tax rules” should be added after “on an ongoing basis” according to the PP6 of 78/230. The discussion of first session supported this point.

- In paragraph 7(c), “while” should be replaced with “contributing to” in order to clarify the relationships between illicit financial flows and other challenges and the international tax system.

Principles

- In paragraph 9, “be made to” should be added after “more effective should” for grammatical correction, and “should” should be replaced with “could” to keep flexibility.
- The following bullet should be added to paragraph 9 to align with our general comments: “ensure comprehensive participation so that the convention reflects diverse views and interests”.
- The first bullet of paragraph 9, “analytical” should be added after “be universal” because identifying challenges and finding solutions through analytical work are required to make the Convention and its protocols more effective.
- The second bullet of paragraph 9, “covers in a balanced and integrated manner” should be replaced with “considers interactions with other important” in alignment with paragraph 6(b) of resolution 78/230.
- The third bullet of paragraph 9, “subject matter allows” should be replaced with “rules appropriately work” to clarify the meaning.
- The fourth bullet of paragraph 9, “tax” should be added before “certainty” because we focus on international tax matters.
- The fifth bullet of paragraph 9 should be replaced with “ensure sufficient flexibility and resilience, and agility to the evolution of technology and business models and the international tax cooperation landscape” because the phrase “equitable results” is unclear. We would like to ask the Secretariat to answer what you intend to describe in this sentence.
- **The seventh bullet of paragraph 9 should be replaced with “enhance domestic resource mobilization through taxation measures which could include allocating fair taxing rights, reforming domestic taxation systems, and strengthening institutional capacity”.** In the first session, most jurisdictions agreed on the importance of DRM.

However, there were divergent views on how DRM should be achieved. So, we tried to formulate a reflection of the discussion in a fair manner.

- The eighth bullet of paragraph 9 should be replaced with “ensure tax transparency of all taxpayers, while respecting the right to privacy and duty of confidentiality, and other fundamental human rights” because we have never discussed the accountability of taxpayers and it is unclear what it means. In addition, when we consider transparency, we need to pay attention to the duty of confidentiality to avoid impairing taxpayers' trust as well as right to privacy.

Substantive elements of the Framework Convention

- We suggest the deletion of paragraph 10. Many states are confused by the concepts of objective, principle, commitment, early protocols and approaches. Probably, it would be better not to discuss the details of commitments. If we include this, the chapeau should discuss DRM and the paragraph should be replaced with “The framework convention could include commitments on enhancing domestic revenue mobilization through tax measures such as:
[fair allocation of taxing rights;
indirect taxation
environmental taxation;
strengthening institutional capacity; and
dispute prevention and resolution.]”

Capacity building

- In paragraph 11, “norm setting process” should be replaced with “enhancing international tax cooperation” because a broader term would be appropriate in this context, as capacity building is related to various areas, including improving administrative capacity.
- In paragraph 12, “should” should be replaced with “could” to keep flexibility.

Structural elements of the Framework Convention

- In paragraph 13, “should” should be replaced with “could” to keep flexibility. Also, “right to vote, signature, ratification, entry into force, reservations, withdrawal, and interim arrangement” should be added into the paragraph, because these provisions are usually included in treaties. Moreover, “adoption of protocols” should be replaced with “protocols”, because procedures for protocols are not the only matter for adoption, so we

should use just the general word "protocols" as in other conventions.

Specific priority areas that should be addressed in early protocols

- In paragraph 14, “should” should be replaced with “could” to keep flexibility.
- “Or other agreements” should be added to all references to protocols in the ToR to give flexibility to the negotiation body. Which instrument provides a better solution varies issue by issue, and we need to choose the option that resolves the issue more effectively and efficiently.

Approaches and time frame for negotiation

- In the first sentence of paragraph 16:
 - “**, which should consider expanding its membership to non-state jurisdictions given their tax autonomy**” should be added after “**a Member State-led negotiating committee**” because we raised this issue at the first session, and some Member States supported this idea for inclusiveness and effectiveness for international tax cooperation; and
 - “**, in accordance with established practice**” should be removed because this phrase is unclear and also unnecessary here.
- In the second sentence of paragraph 16:
 - “**New York**” should be replaced with “**a place which the negotiation committee agrees on**” because some countries argued for different locations, so the specific location should not be addressed, and rather we should leave the decision to the negotiation committee;
 - “**for [number] sessions, of a duration of [number] working days each**” should be removed, because how many sessions and days will be needed depends on how the negotiations will proceed; and
 - “**and submit the final text of the framework convention and of early protocols to the General Assembly for consideration [at its [81stXX] Session]**” should be removed. In particular, “**for consideration**” seems to mean that the General Assembly could amend the decision of the negotiation body although it should be the final decision.
- Paragraph 17 should be replaced with “**In parallel with the negotiation of the convention, the negotiation body should conduct analysis for deciding the topics of early protocols so**

that the conference of the parties can begin to draft those protocols or any other instruments in a timely manner".

- **In paragraph 18, “a chair” should be replaced with “three co-chairs” and “three vice-chairs” should be replaced with “sixteen vice-chairs”. We believe that in order to ensure an equitable balance of representation by geographic location, economic size, and development stage, **there should be three co-chairs, such as one each from a developing country, a small island country, and a developed country.** In addition, “and economic size and development stage” should be added after “equitable geographical representation” to ensure a balance of the bureau members.**
- **In paragraph 19, “and make best efforts to reach consensus” should be added after “fully engaged,” as many states agreed in the previous sessions.**
- **A placeholder for the decision-making process should be inserted into the section on “Approaches and time frame for negotiation” to include this discussion as a dedicated agenda in the second session.**