



Reference: UN 1/9/45
Note Verbale No: 211/2024

The Permanent Mission of the Republic of Malta to the United Nations presents its compliments to the United Nations Department of Economic and Social Affairs (UN-DESA) and makes reference to the call for comments on the UN Framework Convention on International Tax Cooperation and the Bureau's proposal for the zero draft Terms of Reference.

The Mission is hereby transmitting the submission of the Government of Malta towards the Draft Terms of Reference for a UN Framework Convention on International Tax Cooperation.

The Permanent Mission of the Republic of Malta to the United Nations avails itself of this opportunity to renew to the United Nations Department of Economic and Social Affairs (UN-DESA) the assurances of its highest destination.

New York, 21 June 2024



**UN DEPARTMENT OF ECONOMIC & SOCIAL AFFAIRS
NEW YORK**

Contribution by the Government of Malta

Malta wishes to see an **efficient and effective process** at the United Nations (UN) level in the area of international tax cooperation which seeks to promote two very important aspects within the international tax architecture i.e., stability and reliability. In this context, the terms of reference (ToR) for such Convention are crucial to clarify and determine the governance structure to guide future work, including high-level commitments and procedural rules. Additionally, Malta looks forward to seeing a successful process whereby the Ad Hoc Committee (AHC) builds bridges and finds common ground by fostering mutual understanding.

Generally, Malta believes that there is a need for greater **clarity on the procedures** that need to be followed by the intergovernmental negotiating committee in the ToR, similar to what has been done in other UN processes (e.g. paragraphs 17-19 of the UN General Assembly (UNGA) Resolution 72/249 on an international legally binding instrument under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction).

Malta would like to reiterate the importance of **consensus-based decision-making** which should clearly be reflected in the ToR. Consensus should be required in the negotiation and adoption of the text of the Convention and its protocols, as well as for the work of the AHC, with the objective of achieving a generally acceptable result.

Malta believes that there is a need for a discussion by UN Member States on the open issue concerning the development of **early protocols** in parallel to the negotiation of the Convention. In this respect, it is pertinent to recall the wording used in the report of the Secretary General on Promotion of inclusive and effective international tax cooperation at the UN: "If there is sufficient agreement on certain action items, some of these protocols could be negotiated at the same time as the framework convention." This option was only suggested as a possible course of action and in Malta's view this should be reflected as such in the ToR. Within this context, Malta believes that only a limited number of early protocols could be developed after the negotiation of the Convention is concluded. Consequently, Malta proposes the following amendment to the draft ToR: "Early protocols on a small number of specific priority areas could be developed after the negotiation of the framework convention."

The proposed **timeline** in the zero draft ToR suggests that the intergovernmental negotiating committee should begin negotiating the early protocols during negotiations of the Convention. Malta believes that this will place excessive demands on Member States' resources and, therefore, recommends that the negotiation of any such protocols be completed within a reasonable timeframe after concluding the negotiations of the Convention. The timeframe for the negotiations of early protocols will need to take into consideration the number of such protocols and the subjects they cover. There should not be a single deadline for finalising all substantive protocols.

Furthermore, Malta is of the belief that the **topics of protocols** should focus on areas with the broadest consensus and agreement, and issues that are already under negotiation or those with internationally agreed standards should be avoided. Therefore, it would be appropriate to first conduct an exhaustive analysis and assessment of a small number of issues to enable prioritisation of certain topics over others only following the conclusion of negotiations of the Convention. Furthermore, throughout its work, the intergovernmental negotiating committee is to avoid duplicating the work of other relevant fora and consider potential synergies so as to leverage existing tools, strengths, expertise and complementarities of the multiple institutions and processes involved in tax cooperation at international, regional and local levels.

Furthermore, Malta believes that **other instruments** besides the above-referenced protocols should be explored such as best practices or soft law.

In Malta's view, the **commitments** mentioned in the zero draft should be high-level, illustrative and complementary to already existing commitments. In this respect, Malta suggests including domestic resource mobilisation, capacity building, and fostering tax compliance.

Considering the lack of a **common understanding of certain concepts** of the draft ToR among UN Member States to date, for instance 'tax-related illicit financial flows', there is a need to delineate these concepts in the ToR. Guiding notes on this or other similar unclear concepts or topics should be prepared for the second session of the AHC.

Finally, the ToR should not prejudge the outcomes of the intergovernmental negotiating committee but rather clarify that the work of the intergovernmental negotiating committee is to be based on substantive technical analysis before starting work on any potential measures in a targeted and efficient manner.