

INPUT ON BEHALF OF NORWAY
TO THE PROPOSAL FOR ZERO DRAFT TERMS OF REFERENCE FOR A UNITED
NATIONS FRAMEWORK CONVENTION ON INTERNATIONAL TAX
COOPERATION

Norway would like to thank the Chair for preparing the Zero Draft Terms of Reference for a United Nations Framework Convention on International (TOR). We appreciate the opportunity to provide written comments on the TOR.

General remarks

We support the aim set out by the Chair in the Introductory Note that the TOR should provide guidance on the negotiation of the framework convention without unduly limiting flexibility for the negotiating committee. In particular,

- We support staying with the guidelines set out in resolution 78/230 for drafting the TOR
- The TOR should be drafted in a manner that will ensure wide participation in the negotiation process to facilitate wide adoption of the Framework Convention and any protocol to the framework convention.
- Further, it is important to set realistic timelines for the negotiations that allow for the appropriate analysis and discussions of relevant issues and that are aligned with the scope of the negotiations set out in the TOR.

Objectives

We support the three objectives set out in the Zero Draft.

A fundamental objective of international tax cooperation is also to facilitate trade and investment, in particular by preventing double taxation and over-taxation and preventing tax avoidance and tax evasion. The Addis Ababa Action Agenda in resolution 69/313 also highlights the importance of trade and investments in domestic resource mobilisation and supporting the sustainable development goals. Norway suggests including facilitating trade and investment as one of the objectives of the Framework Convention.

Principles

In our view the principles listed provide a good basis for discussions in the negotiating committee. To leave flexibility for the negotiating committee we suggest including principles on an indicative basis that could be considered by the committee in their work. Therefore, we suggest rewording the introduction in para 9 to serve as a recommendation by replacing “should” with “could”.

The existing framework for international tax cooperation addresses a wide range of issues developed over many decades from principles of allocation of taxing rights to cooperation on tax administration issues ranging from exchange of information for tax purposes and

assistance in collection of tax. The current framework builds on a range of different measures, from sharing of best practices through policy recommendations to legally binding treaties.

Substantial resources have been invested in the existing framework. The existing framework and ongoing work is heavily integrated in the tax policy, domestic tax system and domestic tax legislation of many Member States in both developed and developing countries. The existing work and results that have been attained are based on decades of negotiations and expertise and results gathered. This should be taken into account in the negotiations of the Framework Convention, in order to add value to the Framework Convention at the UN.

Resolution 78/230 in OP 6 d) also refers to taking into consideration the work of other relevant forums, potential synergies and existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local level. OP 6 of resolution 78/230 sets out the guidelines for elaborating the TOR. 6 (a)-(c) and (e) is reflected either as an objective, a principle or a specific suggestion for protocols in the TOR. Therefore, it is appropriate to include the guideline in OP 6 (d) in the TOR to adhere to the resolution 78/230. In our view, the list of guiding principles in para 9 of the TOR should take into account existing work of relevant forums. We suggest including this in para 9 rather than in para. 20.

We believe that a significant objective of the Framework Convention is to support the domestic resource mobilisation necessary to fund the measures needed to reach the sustainable development goals. A fundamental part of raising necessary tax revenue is to have in place a domestic tax system and a framework for international tax cooperation that facilitates trade and investment and at the same time addresses tax avoidance and tax evasion. On this basis we suggest including facilitating trade and investment in para. 9 as a principle to be included in the Framework Convention.

Para 9 indent 7 sets out fairness in allocation of taxing rights as a principle for the convention. However, it is unclear what is meant by “contributes to achieving sustainable development” in the context of ensuring fair allocation of taxing rights. Fair allocation of taxing rights should be based on economic realities such as value creation and the location of business activity, assets or taxpayers. The inclusion of contributions to sustainable development here brings uncertainty to the understanding of fair allocation of taxing rights based on economic principles. We therefore suggest editing para. 9 indent 7. to read “ensure fairness in allocation of taxing rights under the international framework for tax cooperation”.

Substantive elements of the Framework Convention

We recommend that the TOR includes “high-level commitments” rather than “commitments”.

Recognizing that the taxation of individuals is subject to the preference of every State and recognizing at the same time the need for the international tax cooperation to ensure that all States can enforce their domestic law on taxation of individuals, we recommend expressing the possible high-level commitment as “addressing taxation of high-net worth individuals”.

This will ensure that the commitment remains high-level and provides flexibility to the negotiating committee in evaluating appropriate measures to meet this commitment.

Capacity building

We support recognizing capacity building as fundamental to enable governments and tax administrations to participate in all forums for international tax cooperation in a meaningful manner and at all levels. Further, we support recognizing capacity building as a means to enforce both domestic tax legislation and international agreements on taxation and administrative assistance. Existing capacity building initiatives such as the UNDP-OECD collaborative program “Tax Inspectors without Borders”, have been very effective and provide a good example of how different international organizations can mutually reinforce each other’s comparative strengths. This wider scope of capacity building could be included in the TOR.

Structural elements of the Framework Convention

We believe that the relationship between domestic law and international law through a Convention should be determined by a Member State’s own domestic law, usually at Constitutional level. We therefore suggest deleting the reference to “domestic law” in para 13.

We would like to have more clarity on what is intended to be covered by the reference to financial resources and mechanisms. This is a feature that is not included in existing multilateral treaties in the tax area. Any commitment here should not have the impact of binding a Party’s budgetary process.

Specific priority areas to be addressed in early protocols

In line with our view that the TOR should not unduly restrict the flexibility of the negotiating committee and ensure wide agreement on the TOR, we suggest that the TOR should *recommend* topics for early protocols rather than serve as directives and support the use of “could” rather than “should” in the introductory part of para 14.

We support a staged approach in line with the suggestion made by the UK in the First Session. The negotiating committee could start discussing early protocols while negotiating the Framework Convention and negotiate the protocols once the negotiation of the Convention is finalised. As set out in para 13, the Convention will determine the framework for negotiating protocols under the Convention. It is important that protocols to the Convention are negotiated on the basis of those rules.

Norway remains fully committed to the work on international tax cooperation in the OECD, The Global Forum on Transparency and Exchange of Information for Tax Purposes and the OECD/G20 Inclusive Framework, including the ongoing work on the Two Pillar Project. The majority of UN Member States are also members of the Inclusive Framework. We do not see the merit in focusing on issues that are already under discussion in other forums with wide participation of UN Member States. We suggest limiting the number of protocols and focus on areas where there seem to be wide agreement. On this basis, issues relating to *high-net*

worth individuals and *tax measures on environmental and climate challenges* could be recommended as topics for early protocols.

We do not see the need to recommend issues for future protocols to the Framework Convention. Once the Convention is in force it should be up to the Conference of the Parties to determine which topics should be addressed at any given time. This approach is in line with the objective in para. 7 b., that the Framework Convention should be able to respond to future tax and tax-related challenges on an ongoing basis. The approach is also in line with the aim of providing sufficient flexibility to the negotiating committee.

Approaches and timeframe for negotiation

The TOR should recommend an approach to the negotiations that is realistic and allows sufficient time for the preparatory work needed to conduct the negotiations in an informed, efficient, and inclusive manner.

Any negotiation on international tax cooperation raises complex issues, and the TOR should ensure that these are addressed based on thorough analysis and sound knowledge. We believe it is important to ensure sufficient analysis of the issues that arise both in relation to the negotiations of the Framework Convention and its protocols. We recommend that the UN makes use of the knowledge, expertise and capacities that reside in particular in the IMF, WB and the OECD. The Platform for Collaboration on Tax forms a good basis for such analysis, especially if supported by input from the global tax research community/academia. We recommend including this as a new paragraph 21.

We suggest a bureau consisting of at least two representatives from each regional group to ensure that the widest range of economies and geographies are represented.

In line with our view that the TOR should set out a roadmap for the negotiations that ensure wide agreement on the end result and wide adoption of the Framework Convention and its protocols we support consensus as the decision-making mechanism. We believe this should be included in the TOR. The principle of consensus is widely accepted in the international tax cooperation and has proven to ensure agreements that are accepted and implemented by all participants in the relevant process. The Vienna convention on the Law of Treaties in Article 9 also recognises as a default rule that the text of a treaty takes place by the consent of all states participating in the negotiations of the text. In that spirit we propose to include the following as a 16 bis: "With regards to adoption of the convention, the Member State-led negotiating committee shall adhere to the the Vienna Convention on the Law of Treaties (1969) Article 9."

We support realistic timelines for the negotiations that take into account the complexities of cross-border tax issues and the need for analysis and thorough discussions at a technical level. We suggest that the TOR does not mandate strict time limits for the negotiations and leave sufficient flexibility for the negotiating committee to adapt its discussions to the subjects to be addressed.

The TOR should also acknowledge the importance of participation by stakeholders, and we suggest including this as a new para. 22.

We look forward to a constructive and productive Second Session.