

# Korea's comment for the zero draft terms of reference for a United Nations Framework Convention on International Tax Cooperation

June 2024

Korea respectfully proposes to the Ad Hoc Committee that the zero draft terms of reference for a United Nations Framework Convention on International Tax Cooperation include the following:

## 1. Objectives and Principles

Korea reiterates its position on the principles of (1) *coherency* in existing international rules and (2) *complementarity* of the UN rules in relation with other international rules and standards.

In this respect, Korea proposes that:

- At the end of para 7 (b), 'as well as existing international tax rules' be added to be in line with the content of OP6 letter (d) of Resolution 78/230;
- In para 7(c), the word 'coherence' be added after the word 'fairness' to be 'with a view to enhancing the legitimacy, certainty, resilience, fairness and coherence'; and
- In para 9, the following sentence which was originally placed in para 20 be replaced here.

*[- take into consideration the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels.]*

## 2. Substantive elements of the Framework Convention and early protocols

Korea highlights the importance of avoiding discussions that are duplicative and overlapped with the work of the OECD where Pillar 1 is nearing to its ends and thereby proposes that substantive elements and protocols be more focused on non-controversial issues such as mutual administrative assistance, exchange of information, and prevention and resolution of tax disputes.

In this respect, Korea proposes that:

- In para 10, (1) 'fair allocation of taxing rights, including equitable taxation of multinational enterprises' be deleted, and (2) 'mutual administrative assistance' be added.
- In para 14, 'taxation of the digitalized and globalized economy', and 'taxation of income derived from cross-border services' be deleted, and 'exchange of information' and 'mutual administrative assistance' be added.
- Further, in para 14, the wording 'should' in [Early protocols on a small number of specific priority areas should be developed...] be replaced with 'may', since Res. 78/230 requests AHC to *consider simultaneously developing early protocols* in OP6(e) and the wording 'may' would be more reflective of the Resolution.

To add one more point, Korea proposes para 15 be deleted as a whole, because it is unnecessary to include future protocols at this stage.

## 3. Constitution of the bureau of the negotiating committee

Korea views it essential to ensure the balance and coordination between developing and developed countries in constituting the bureau of the negotiating committee. In this respect, Korea supports the voices of the member states that propose a co-chair system and thereby proposes that the bureau of the

negotiating committee consists of two co-chairs, or possibly three co-chairs, along with ten vice-chairs, rather than three vice-chairs. Considering that not all Member States can convene easily and frequently, the enlarged bureau would effectively represent diverse interests of the Member States and efficiently cooperate with the Secretariat.

In this regard, Korea also believes that the bureau should be elected not only based on the geographical representation, but also based on economic size.

In sum, para 18, reflecting what is proposed, will read as: *“The bureau of the intergovernmental negotiating committee should consist of two co-chairs (or three co-chairs), ten vice-chairs and a rapporteur, elected on the basis of equitable geographical representation and economic size”*.

#### **4. Structural elements of the Framework Convention**

Korea proposes that two additional elements, *‘reservation’*, and *‘withdrawal’* be included in addition to those listed in the paragraph, to be placed after ‘dispute settlement mechanisms’. These elements are typically used in treaties, i.e., *UN Framework Convention on Climate Change*, and will provide a Member State a right to reserve when some of the issues included and agreed in the protocols are too burdensome to implement locally.

#### **5. Procedural element of the Framework Convention (Decision-making rules)**

Korea has constantly voiced the need for reaching consensus in decision-making. It should be stipulated in the TOR that the adoption of the Framework Convention shall not be made until all efforts for reaching consensus have been exhausted, which has been already discussed and added to Annex I of Outline and Modalities (Intro part). And to facilitate a reasonable voting process when consensus is not reached upon all reasonable efforts made, Korea proposes a two-thirds majority as an alternative.

Accordingly, Korea proposes to add a separate paragraph elaborating a procedural element of the Framework Convention, as below:

*[As a decision-making process, given the importance of international tax cooperation, every reasonable efforts should be made to seek consensus on substantive matters; when consensus is not reached after all reasonable efforts are exhausted, a two-thirds majority vote should be proceeded.]*

Further to that, Korea proposes to add in Para 19 the wording ‘make best efforts to reach consensus’ which will read as following: *“Member States should be fully engaged and make best efforts to reach consensus in the negotiation of the framework convention and endeavor to ensure continuity in their representation.”*

#### **5. Approaches and timeframe for negotiation**

Korea supports the proposal by other Member States that a membership of a negotiating committee be expanded to non-state jurisdictions given their tax autonomy. Korea believes that the voices of the non-state jurisdictions should be heard in the process of negotiations to make more inclusive Framework Convention.

Thus, the first sentence of para 16 should read as: *“The framework convention should be elaborated by a Member State-led negotiating committee, which should consider expanding its membership to non-state jurisdictions given their tax autonomy(added), in accordance with established practice.”*

The schedule for ‘finishing the negotiation of protocols no later than six months after the conclusion of the framework convention’ looks very tight. It does not seem reasonable to finish negotiations of both framework convention and early protocols within two and half years. In this respect, Korea proposes that ‘six months’ be bracketed to be further discussed by the Member States for more reasonable

negotiation periods.

Further, Korea agrees with the need of economic analysis on the issues to be addressed, which were agreed by other Member States as well in the first session. Thus, Korea proposes to add the following as a last paragraph:

*“The negotiations should be based on thorough analysis of the issues to be addressed in the Framework Convention and possible protocols. The negotiating committee should make use of the resources and capabilities in other international organization such as the IMF, the World Bank and the OECD.” /END/.*