

Singapore's inputs for the draft TOR

Thank you for the opportunity to provide our inputs.

Singapore supports the process to draft a TOR for a framework convention to strengthen international tax cooperation.

Our starting point is that international tax cooperation can only be effective if the framework convention can garner sufficient buy-in from member states. It is therefore imperative that even as we undertake an ambitious agenda, the concerns and views of all Member States be considered and reflected in the process, and that all efforts be made to achieve consensus on areas of divergence.

Our view is that the draft TOR needs to reflect the balanced discussions at the First Session. A significant number of Member States voiced concerns on topics to be covered such as early protocols, the negotiation timeline and other procedural matters. A lack of broad agreement on these matters will hinder the ability of the negotiating committee of the framework convention to develop sound, long-lasting and widely adopted solutions, and correspondingly the collective goal of achieving more inclusive and effective international tax cooperation.

At this stage, we believe that seeking common grounds, taking a flexible approach and proposing potential compromises based on the views expressed at the First Session is the most practical and effective way forward for all parties.

With the above in mind, we provide our comments for consideration.

Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

1. Principles

Paragraph 9, bullet point number 6

- Recognise that every Member State has the sovereign right to decide the policies and practices of its domestic tax system, and the responsibility to ensure that such policies and practices do not undermine the effectiveness of the tax base or system of other Member States

1.1. We propose deleting the yellow highlighted text above as its intended coverage is not clear. As acknowledged in the first half of the sentence, each Member State has the sovereign right to design its domestic tax system to meet its needs. If the highlighted text seeks to clarify that Members should not engage in harmful tax practices, we highlight that this concern is being addressed by the OECD Forum on Harmful Tax Practices and the text can be deleted. If not, we seek clarification on its scope.

Paragraph 9, additional new bullet point

- 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.

- 1.2. We propose addition of the text above as an important principle for the negotiation of the framework convention. This is already acknowledged as a Principle in OP6 (d) of Res. 78/230 and it should be retained in the TOR.

2. Substantive elements of the Framework Convention

Paragraph 10

10. The framework convention should include commitments on:
fair allocation of taxing rights, including equitable taxation of multinational enterprises
...

- 2.1. We propose the deletion of the yellow highlighted text in the box above as “fair allocation of taxing rights” would already be encompassed in the “equitable taxation of multinational enterprises”.

3. Structural elements of the Framework Convention

Paragraph 13

13. The framework convention should also include the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources and mechanisms; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; **reservation; withdrawal;** and procedures for amendments and adoption of **the framework convention and protocols or other instruments.**

- 3.1. We propose edits above in **green text**, for completeness.

- Reservations and withdrawals may be necessary as not all solutions created under the umbrella of the framework convention would be applicable for all Member States and the adoption of solutions would depend on their domestic law, their needs, and capabilities. Other UN Conventions also provide for reservations and exceptions (e.g. Agreement under the UN Convention on the Law of the Sea for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ)). Providing such flexibility will help garner consensus and increase the level of buy-in for the framework convention.
- We have included “the framework convention and” is for clarity as we understand that the adoption of and future amendments to the framework convention is a separate process from the protocols’ and would require its own set of procedures.
- “or other instruments” was added in order to provide the negotiating committee with flexibility to adopt the most appropriate method.

4. Specific priority areas to be addressed in early protocols

Title and Paragraph 14

Specific priority areas that can potentially ~~to be~~ addressed in early protocols or other instruments

14. Early protocols on a small number of specific priority areas ~~should~~ **may** be developed simultaneously with the negotiation of the framework convention **for interested parties taking into consideration existing work**. The following are specific priority issues **that can potentially** be addressed through such early protocols **or other instruments**:

[taxation of the digitalized and globalized economy;
taxation of income derived from cross-border services;
tax-related illicit financial flows;
prevention and resolution of tax disputes; ~~and~~
taxation of high-net worth individuals; ~~and~~
capacity building for domestic resource mobilisation.]

- 4.1. We echo previous comments made by other delegates that it is necessary to first conduct a thorough analysis of the agreed priority areas so that the Committee can determine the most relevant solution, **which, may or may not, be a protocol**. As a practical matter, we should also focus on priority areas which have the most support so that we can achieve good outcomes within reasonable time. Please see paragraph 5.2 below on our further comments regarding the timeline. Separately, as widely acknowledged by delegates, Member States should have the ability to customise their involvement and adoption of protocols based on their individual needs and capacity. In view of the above, we have proposed some edits above **in green text** and **yellow highlights**.
- 4.2. We propose to keep the list of topics in paragraph 14 in square brackets. We note that these topics were the subject of intense discussions at the first substantive session but there was no consensus reached. We propose that the Committee continue discussions on the topics in the second substantive session to agree on the priority areas. We also propose including “**capacity building for domestic resource mobilisation**” as part of potential early protocols.

Paragraph 15

- 4.3. We propose deleting paragraph 15 since paragraph 14 of the draft TOR already provides for potential topics which this Committee will consider for developing early protocols, and it would be unnecessary to include further topics at this stage. It would be for future committees to consider the relevance of any additional topics.

5. Approaches and time frame for negotiation

Paragraph 16

16. ... The intergovernmental negotiating committee would be convened in New York and initially in 2025 and 2026 meet for [number] sessions, of a duration of [number] working days each, and make all efforts to complete its work and submit the final text of the framework convention and of **any completed** early protocols to the General Assembly for consideration [at its [81st] Session].

- 5.1. We proposed edits in green text above, as not all early protocols may be completed by the 81st Session.

Paragraph 17

17. ... The intergovernmental negotiating committee ~~should~~ may begin negotiating the early protocols or other instruments described above at the same time as it begins the negotiation of the framework convention, with the aim of finishing the negotiation of such protocols or other instruments no later than six months as soon as feasible and practicable, after the conclusion of the negotiation of the framework convention, to optimise coordination between the documents.

- 5.2. We proposed edits in green text and yellow highlights above. Many Member States had raised concerns on the limited timeframe provided to negotiate both the framework convention and early protocols. Further, the proposed list of topics is long. Based on our experience, a coherent, effective, and widely-accepted protocol will require potentially several years to negotiate. Whilst Singapore remains open to further discussions on the timeframe, we think that the currently proposed timeline is impractical.

Paragraph 18

- 5.3. We propose that the bureau of the negotiating committee of the framework convention has two or more co-chairs (from both developing and developed countries), in line with other UN committees (e.g. Fourth Financing for Development Conference and the Summit of the Future), and at least 10 vice-chairs representing the five regional groups. Given the much higher workload expected of the next committee to deliver on the text of both the framework convention and early protocols, and that discussions would likely be more complicated, greater support from the bureau would be necessary. Further, a wider representation would align with the overall goal of inclusivity, to take in the views of all Member States participating in the process.

Paragraph 19

19. Member States should be fully engaged in the negotiation of the framework convention, and endeavor to ensure continuity in their representation and make every reasonable effort in good faith to reach consensus. Where consensus has not been reached after all reasonable efforts are exhausted, decisions shall be taken by a two-thirds majority of the representatives present and voting, before which the Chair, upon a decision of the bureau, shall inform the negotiating committee that every effort to reach agreement by consensus has been exhausted.

- 5.4. As repeatedly emphasised by many delegates, any international tax cooperation solution would only be effective if there is widespread support and adoption. A framework convention or its protocols that is not agreed by consensus, or at least by a sufficient majority, would result in low buy-in and thus low effectiveness. We have proposed edits in green and yellow highlight above, with reference to the UN Cybercrime resolution on the negotiation of its convention (Res. 75/282) and the BBNJ convention.

Paragraph 20

20. Throughout its work, the intergovernmental negotiating committee should 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.~~ The negotiations should be based on thorough analysis of the issues to be addressed in the framework convention, including whether protocols are the right tools to address such issues. The negotiating committee should make use of the resources and capabilities in other international organizations such as the IMF, the World Bank and the OECD.

- 5.5. We propose the replacement of paragraph 20 as set out above and to move the deleted sentence to the “Principles” section, as explained in our comments in paragraph 1.2 above. In line with our comments in paragraph 4.1 above, we echo other Member States’ earlier comments that a thorough analysis is necessary to determine (i) which issues should be addressed in the framework convention, and (ii) whether protocols are the right tools to address such issues. We note that this proposal had garnered support at the first substantive session. Further, to lighten the load on the Secretariat, the bureau and Member States, we should leverage the existing capabilities of other international organisations where appropriate.

Singapore remains committed to playing a constructive role in the process and in building common ground. We will continue to participate actively in the discussions, and we look forward to working towards a draft TOR for the framework convention that all countries can support.

Thank you.

Total: 1925 words