



Ministry of Finance
Tax and Customs Department

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

We thank the Chair for the opportunity to provide written comments on the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (“ToR”). Please find our common messages and more detailed comments on the ToR below.

General comments

We refer to the common position on behalf of the European Union and its Member States of 25 April 2024 that was presented as a general statement during the first substantive session in New York. This position outlines our guiding principles for a UN framework convention on international tax cooperation, which we also want to see reflected in the terms of reference for this convention.

Our comments are based on the desire to promote an efficient and effective process at the UN level in the area of international tax cooperation that will help us to promote stability and reliability within the international tax architecture. In this context, the terms of reference for a UN framework convention on international tax cooperation are crucial to clarify and determine the governance structure to guide future work, including high-level commitments and procedural rules. Additionally, we hope that the Ad Hoc Committee (AHC) will strive to build bridges, find common ground, and foster mutual understanding.

In general, there is a need for greater clarity on the procedures that will be followed by the negotiating committee in the terms of reference, similar to

what has been done in other UN processes.¹ We reiterate the importance of consensus-based decision making and this should clearly be reflected in the terms of reference. Consensus should be required in the negotiation and adoption of the text of the framework convention and its protocols, as well as for the work of the Ad Hoc Committee, with the objective of achieving a generally accepted result.

We stress that developing early protocols in parallel to the negotiation of the framework convention remains an open issue to be further discussed by UN Member States. Furthermore, we recall the wording used in the report of the Secretary General on Promotion of inclusive and effective international tax cooperation at the United Nations: “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 merely suggested as a possible course of action and should be reflected as such in the draft terms of reference. We strongly prefer that only a limited number of early protocols be developed after the negotiations of the framework convention are concluded. Therefore, we propose the following amendment to the draft terms of reference: “Early protocols on a small number of specific priority areas could be developed after the negotiation of the framework convention.”

We recommend that the negotiation of any such protocols be completed within a reasonable timeframe after concluding the negotiations of the framework convention. The timeframe to be foreseen for the negotiations of early protocols will depend on the number of protocols and on the subjects they cover. There should not be a single deadline for finalising all substantive protocols. The topics of protocols should focus on areas with the broadest consensus and agreement, therefore, least controversial topics, avoiding issues that are already under negotiation or those with internationally agreed standards. Therefore, it is appropriate to first conduct an assessment and discuss an exhaustive analysis of a small number of issues and prioritise certain topics over others.

The proposed timeline in the zero draft terms of reference, which suggests that the intergovernmental negotiating committee should begin negotiating

¹ Cf. UNGA Resolution 72/249 on an International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, paragraphs 17-19.

the early protocols, while also starting negotiations of the framework convention, will place excessive demands on Member States' resources.

Throughout its work, the intergovernmental negotiating committee should avoid duplicating the work of other relevant forums. It should consider potential synergies and leverage the existing tools, strengths, expertise and complementarities of the multiple institutions and processes involved in tax cooperation at the international, regional and local levels.

The commitments mentioned in the zero draft should be high-level, illustrative, and complementary to already existing commitments. (Therefore we would suggest including domestic resource mobilization, capacity building and fostering tax compliance.)

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

The terms of reference should reflect that they do not prejudice the outcomes of the negotiating committee and should clarify that the work of the negotiating committee should be based on substantive technical analysis before starting to work on any potential measures in a targeted and efficient manner. In addition, other instruments besides protocols should be explored (e.g. best practices or soft law).

Objectives

- Paragraph 7, c: It is unclear to us what is meant by a "transparent" international tax system and we would therefore suggest that the word "transparent" is deleted.
- Paragraph 7, c: No specific topics should be included in the objectives. Accordingly, we suggest deleting the wording "tax related illicit financial flows and other" from the sentence. If the term "tax related illicit financial flows" is used in other parts of the ToR, then it needs to be further defined.

Principles

- Paragraph 9, fifth topic: We propose that: “technology and business models” is deleted and replaced by: “the societies”.
- Paragraph 9, sixth topic: We do not understand what the text aims at. It does not seem reasonable to require countries that amend their tax laws to analyse the potential effects of such amendments for all other countries. Furthermore, as source country taxation generally reduces the tax income of residence jurisdictions, source taxation can be said to “cause damage to, or undermine the effectiveness of, the tax base” of residence jurisdictions. This would seem like a strange outcome in this context. We therefore strongly suggest that the wording of the text is adjusted according to the following:

“- recognize 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;~~”

- Paragraph 9, seventh topic: Paragraph 9 should in our view set out the guiding principles for efforts to make international tax cooperation fully inclusive and more effective. It should not identify specific areas of work or decide the outcomes of the work ahead. Consequently, we suggest that the seventh topic, i.e. “ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable developments”, is deleted.

Substantive elements of the Framework Convention

- Paragraph 10, first sentence: We strongly request to delete “should” and replace it with “could” to give flexibility in future negotiations.
- Paragraph 10, items: The commitments mentioned here should be high level, non-duplicative and avoid controversial specific issues. We therefore suggest that the list covers the following three issues: capacity building, transparency, and environmental challenges.

Capacity building

- Paragraph 12: It is currently unclear to us what is meant by “build capacity” in this context and how the para should be interpreted, e.g., in relation to para 22. Further clarification is needed.

Structural elements of the Framework Convention

- Paragraph 13: It is not clear to us what is meant by “relationship with domestic law” in this context. We therefore suggest deleting the reference to “domestic law” here. At a minimum it has to be clarified what is meant by this text.

Also, it is not clear to us what is meant by “financial resources and mechanisms” and we would appreciate a clarification on this matter.

Specific priority areas to be addressed in early protocols

- Paragraph 14: As already highlighted in the general comments above, it is important to understand at this early stage which problems are intended to be solved by the convention which requires an analysis before the work on e.g., early protocols begin. We believe that the International Monetary Fund or the World Bank would be well suited to perform such an analysis. To develop early protocols while negotiating the framework convention would also be very challenging resource wise (i.e., likely to be counterproductive, lead to non-inclusiveness). Thus, in our view, any work on early protocols should wait until the framework convention is established, or that at least a certain amount of time, e.g. one year, should be dedicated solely to establishing the legal foundation of the convention. This would also align with para 13 in the ToR, i.e. that the convention settles the structure for negotiating any protocols. For these reasons, we propose that the wording: “simultaneously with” is replaced with “after”. If this approach is not possible, we propose to replace the word “should” with “could”.
- Paragraph 14, priority areas: We suggest avoiding focusing on areas that are already discussed within other international fora, in order to avoid duplication of work (and unnecessary extra budget claims). Focus should further be on areas that are in need of significant improvements, in particular in relation to the least developed countries, and that can be widely accepted and implemented by the member states. Making use of

the revenue raising potential is key for sustainable development. Vital factors in the tax area in this regard is e.g., well-functioning tax administrations, foreseeable and properly designed tax legislation, reporting standards that promote trust in public institutions, and access to relevant information. Furthermore, it is crucial that resources are in place to fulfil the goals of raising revenues and capacity building is needed. Also, consideration of fulfilling the SDGs should be taken into account. For example, digitalisation of tax authorities would also contribute to reducing tax related illicit financial flows. Another example is tax measures on environmental and climate challenges. In line with the above, we suggest that the following priority areas could be included and a couple of issues could be the starting point under para 14: enhancement of domestic resource mobilization (with focus on sharing effective practice, e.g. digitalisation of tax authorities), tax related illicit financial flows, exchange of information (with main focus on supporting measures), and capacity building.

- Paragraph 15: It is currently unclear to us what value the para adds. As regards the additional topics, we are open to discuss whether some of the areas mentioned under para 15 could instead be characterized as “priority areas” and included under para 14.

Approaches and time frame for negotiations

- Paragraph 16: International tax cooperation should always rely on a profound analysis of the issues that are dealt with. It is important that this part of the proceeding is clearly recognised not only in the ToR but also in the time frame for the negotiations.

The wording: “established practice” is vague and should be further clarified.

- Para 17: Please see our comments on para 14 above regarding developing early protocols “simultaneously”. As an additional comment, we do find that the proposed timeline for finishing the negotiation of early protocols (six months after the conclusion of the negotiation of the framework convention) is way too optimistic considering e.g. the complexities of the areas that are in scope for the negotiations.

- Paragraph 18: Taking into consideration the workload and the diversity of countries in every region, we believe that at least 15 countries in total (3 by region) would be more appropriate for the bureau.

Sweden remains committed to actively and constructively participate in the discussions aiming at finding internationally sustainable solutions, that could be acceptable to all.