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Switzerland - Written comments on zero draft terms of reference for a United Nations Framework Convention on International Tax Cooperation

Switzerland is grateful for the opportunity to provide written comments on the zero draft of the terms of reference (ToRs) and shares with you the following considerations in this respect:

General comments

Switzerland supports strengthening the inclusiveness and effectiveness of international tax cooperation. We are engaging in the present discussions at the UN openly and with the hope that a consensus will emerge on actions and initiatives that are based on a sound analysis of the gaps that may exist in international tax cooperation with focus on issues that cannot effectively be addressed at a jurisdictional level.

We maintain that achieving the broadest possible consensus on the text of the framework convention is crucial for its adoption and implementation, and we support including a statement to that effect in the ToRs. Parties will not commit to a convention unless they believe it represents a fair balance of interests. Reaching consensus among competing interests is challenging and may take time, but it is essential for developing a convention that is widely implemented, which should be the primary aim of an inclusive process.

The ToRs should focus on the procedural elements for negotiating the framework convention. The right process is crucial to successfully achieving the substantive outcomes we aim for, and need to be defined in the ToRs, in particular on the issue of decision-making. Leaving the decision-making process out of the ToRs, when many other procedural issues are defined (composition of bureau, agenda, time-line), will only delay the process as this postponed discussion will most likely considerably slow down progress in the second committee of the General Assembly.

Furthermore, we believe that priority should be given to negotiating the framework convention before discussions on early protocols. The convention will establish the conceptual and institutional frameworks guiding the negotiation of protocols. Therefore, it would be inappropriate to develop protocols while the convention's design and substance are still being negotiated. We should also consider the resource challenges Member States face when participating in multiple negotiations simultaneously, challenges that were brought up by both developed and developing countries at the first substantive session. In addition, we emphasize that additional protocols are according to the UN Secretary General 2023 Report to "*opt in and opt out*" and we observe that this feature is not yet reflected in the ToRs.

Regarding substance, we believe the ToRs should be designed based on the objectives and the text set out in Resolution 78/230 in order to create the best environment possible for successful negotiations. It is essential that the ToRs should outline the objectives and scope of the convention while ensuring that the convention complements and aligns with other existing international tax instruments. In this context, priority should be given to issues that are less controversial and are more likely to achieve consensus. Furthermore, we are of the opinion that simplification is needed in today's international tax cooperation and that issues should be addressed also based on their potential for simplification or also complication. In order to build on areas of consensus and potential for simplification, we believe a particular emphasis should be made on capacity building and domestic resource mobilization.

We believe there are many topics that need analysis and clarification in order to help reach a common understanding of what these terms cover, like fairness of the allocation of taxing

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rights, tax-related illicit financial flows, cross border services or requiring transparency and accountability of tax payers.

Finally, it is essential that the negotiations are open, accessible, and transparent so all Member States can participate effectively with the same information and analysis available to others. We note that the draft ToRs do not represent the view of all bureau members. It appears indeed that the ToRs do not reflect important concerns raised by multiple States at the first substantive session (e.g. regarding decision-making, timing of early protocols, number of early protocols, importance of complementarity, prioritization of work). We are of the opinion that, in order to achieve an inclusive process, the text should reflect the range of views that were expressed in the discussions, with a transparent process for resolving differences.

Specific comments to the ToRs

Paragraph 7

b. The word “governance” does not appear in resolution 78/230. It is unclear what this means.

c. “... to establish an international tax system ...” does not reflect resolution 78/230, that called for strengthening international tax cooperation and making it fully inclusive and more effective. We furthermore propose not to use the term “fair” as its meaning is unclear and strongly depending on the different interests of each country.

Paragraph 9

Bullet 1: “in particular countries in special situations” – delete, as this is unclear.

Bullet 6: The first (tax sovereignty) and second sentences (“to not undermine the effectiveness of the tax base of other Member states”) seem contradictory. We suggest to replace the second sentence by the following text from Resolution 78/230 “*and that this tax sovereignty implies international tax cooperation that allows all countries to effectively participate in developing the rules, by right and without preconditions, and adapt and implement them in accordance with their needs and preferences*”.

Bullet 7: We propose not to use the term “fair” as its meaning is unclear and strongly depending on the different interests of each country. Resolution 78/230 does not mention the allocation of taxing rights, and further analysis needs to be made on what exact aspects of the international tax system are inadequate to achieving sustainable development (residence, source taxation, value creation etc.). We suggest to replace “system” with “cooperation” to keep in line with language of the 78/230 resolution.

We propose to add following bullet point:

“- *To take into consideration the work of other relevant fora, 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*”. This principle is the text of paragraph 6(d) of resolution 78/230. Paragraphs 6(a) to (c) of resolution 78/230 are all listed under principles as well. There is no reason to separate 6(d) from the other three principles in the ToRs.

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Paragraph 10

It is not clear why this paragraph on these apparent high-level commitments is in brackets. The whole document is per se in brackets.

This list of commitments needs to be discussed in the upcoming session. As the purpose of the convention is to ensure full inclusiveness and effectiveness of international tax cooperation, commitments need to be specifically made in areas that will benefit most from further international tax cooperation while taking into consideration work done in other fora.

We have taken note that the zero draft addresses the subject of transparency and exchange of information for tax purposes. Work on the implementation of the international standards in this area is ongoing, including robust peer review and monitoring processes. Furthermore, capacity building and efforts to enable all countries to benefit from the established transparency framework are ongoing and remain at the top of the international agenda. While capacity building work can be extended and built on, it would remain crucial to allow for countries to implement the agreed standards. We trust work as envisaged in the zero draft will take these aspects into consideration.

Paragraph 12

We reiterate our intention to engage in discussions regarding commitments to capacity building. Other issues to be discussed are the coordination of different actors in this field and also the ways to improve the output of capacity building activities for countries wishing to benefit. We also recall that other countries raised these issues as well and we believe that these issues should be reflected in the ToRs.

Paragraph 12 may be misleading. It is the primary responsibility of each Member States to build capacities to participate effectively in international tax cooperation. This is an outflow of sovereignty. The entity or entities identified in the framework convention will only support the Member States in achieving this goal. Therefore, we suggest deleting “have primary responsibility for, and funding for, supporting” and replacing it with “support”.

Paragraph 14

As specified in Option 2 of Secretary-General 2023 report (“*If there is sufficient agreement on certain action items, some of these protocols could be negotiated at the same time as the framework convention*”) early protocols should be limited to only one or two and only for less controversial issues. This was also noted by many delegates from both developed and developing countries in the 1st session. Further, complex issues like taxation of high-net worth individuals or taxation of digitalized and globalized economy should not be considered as topics for early protocols.

The list of specific priority areas to be addressed in early protocols also depend on the crucial issue if the protocols are all “opt in, opt out”, as described in the UN Secretary-General 2023 report, or not.

Paragraph 15

We suggest to delete this paragraph. The subject of future protocols is clearly up to the second committee of the General Assembly and these suggestions exceeds the mandate of the ad hoc committee as the resolution 78/230 only mentions the possibility to consider early protocols in paragraph 6(e).

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Paragraph 16

Our concern is that a short timeline for such a significant undertaking as negotiating and finalizing a framework convention (and if such be the case already considering early protocols) will decrease the chance of a broad agreement, particularly given the inherent technicalities of tax policymaking. Sufficient time is also needed for an inclusive process where the views of all members are heard and considered, as many developing countries called for capacity building to be able to participate in the negotiations.

We believe that a simple majority is not appropriate for establishing international tax rules, which cannot be imposed by a majority over a minority of member states. Instead, consensus should be required in the negotiation and adoption of the text of the UN framework convention on International Tax Cooperation and its protocols. 'The negotiations in the second committee of the General Assembly should also be guided by the principle of consensus. Also to be consistent with Annex I paragraph 1 approved in the organizational session (New York, 20–22 February 2024): *“Given the importance of international tax cooperation, every reasonable effort should be made, within the available time frame for negotiations, to seek consensus on substantive matters in the ad hoc committee.”*

In this regard, we reiterate the necessity to address decision making in the ToRs. The ToRs establish many other modalities of the development of the framework convention such as the composition of the bureau, what items are to be included at a minimum and even the time-line etc. It should at least set out that the Chair should exhaust all efforts to reach consensus and include the bureau in these efforts to indicate to the second committee of the General Assembly that consensus is needed to establish a framework convention that will have legitimacy and be supported by as many as possible.

Paragraph 17

We reiterate the compromise proposal made at the 1st session. The work could fully focus only on the framework convention for a certain period of time, for instance 1 year, before starting the discussions on early protocols.

Paragraph 18

In view of the workload and in order to take into account the diversity of countries in every region, we believe this number is insufficient. We would propose a minimum of 15 countries in total (3 by regional group).

Paragraph 20

We suggest to move this text to paragraph 9, as explained above.

Switzerland looks forward to the upcoming discussions on the revised draft during the second substantive session in view of finalizing ToRs that will give the tools to the next committee for negotiating a framework convention that will be inclusive and that will effectively strengthen international tax cooperation while complementing the existing international tax cooperation