

Introductory Note to the Bureau’s Proposal for Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation by the Chair of the Ad Hoc Committee, Mr. Ramy M. Youssef, 7 June 2024

In accordance with General Assembly resolution 78/230 and the decisions taken by the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation at its Organizational Session, the Committee undertook a substantive scoping of the content of the draft terms of reference (ToR) during its First Session, held in New York from 26 April to 8 May 2024.

Following on the First Session, the twenty-member Bureau of the Committee has been working to prepare a “zero draft” ToR. With great appreciation for the work of all Members of the Bureau, I share this zero draft, representing the Bureau’s efforts to achieve consensus, noting, however, that this draft does not necessarily represent the unanimous view of all Bureau Members.

To deliver on the Committee’s mandate, the present zero draft ToR sets out the basic parameters and mechanisms of a United Nations Framework Convention on International Tax Cooperation. The zero draft ToR aims to provide guidance to the negotiation of the framework convention without unduly limiting flexibility.

In accordance with the Committee’s timeline for inter-sessional work, Member States and other stakeholders are invited to provide written comments on the present zero draft ToR for a United Nations Framework Convention on International Tax Cooperation. The comments will inform the preparation of the draft text that will be the basis for the discussions and negotiations during the Second Session, to be circulated to Member States and other stakeholders by 15 July 2024 (tbc).

Comments on the zero draft must not exceed a strict word-limit of 2,000 words per submission, to be emailed to ahc-tax@un.org by no later than 5 p.m. EDT on 21 June 2024. Please note that any submissions exceeding the word limit will be returned. Submissions received will be posted on [Committee website](#).

This draft does not necessarily represent the unanimous view of all Bureau members.

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

Introduction

[Note: The purpose of this Introduction to the zero draft TOR is to provide readers with a brief overview of the background and mandate of the Ad Hoc Committee. The introduction provides the context for the draft TOR. The first substantive part of the TOR is the following section on the Preamble of the Framework Convention.]

1. In adopting resolution 78/230, "Promotion of inclusive and effective international tax cooperation at the United Nations," the General Assembly emphasized that developing a United Nations framework convention on international tax cooperation is needed in order to strengthen international tax cooperation and make it fully inclusive and more effective.
2. The General Assembly recognized in the resolution that developing a framework convention will also help in accelerating the implementation of the Addis Ababa Action Agenda on Financing for Development and the 2030 Agenda for Sustainable Development.
3. Therefore, the General Assembly established a Member State-led, open-ended ad hoc intergovernmental committee for the purpose of drafting terms of reference for a United Nations framework convention on international tax cooperation.
4. The General Assembly further requested that the ad hoc intergovernmental committee submit a report to the General Assembly at its seventy-ninth session, containing the draft terms of reference for a United Nations framework convention.
5. The ad hoc intergovernmental committee, having completed its work in accordance with this mandate, now recommends for consideration by the General Assembly the following draft terms of reference for the negotiation of a United Nations framework convention on international tax cooperation:

Preamble

6. The text of the framework convention should be reflective of the following General Assembly resolutions:

- 78/230 of 22 December 2023 on "Promotion of inclusive and effective international tax cooperation at the United Nations";
- 77/244 of 30 December 2022 on "Promotion of inclusive and effective international tax cooperation at the United Nations"; and
- 69/313 of 27 July 2015 on the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

Objectives

7. A United Nations framework convention on international tax cooperation should include a clear statement of its purposes. In that regard, it should:

- a. Set out the fundamental principles that ensure the full inclusiveness and effectiveness of the international tax cooperation in terms of substance and process.
- b. Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State;
- c. Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing tax-related illicit financial flows and other challenges to strengthening domestic resource mobilization.

Principles

8. A United Nations framework convention on international tax cooperation should include a clear statement of its guiding principles.
9. Efforts to make international tax cooperation fully inclusive and more effective should:
 - be universal in approach and scope and should fully take into account the different needs, priorities, and capacities of all countries, in particular countries in special situations;
 - take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects;
 - provide for rules that are as simple and easy to administer as the subject matter allows;
 - increase certainty for taxpayers and governments;
 - be sufficiently flexible, resilient and agile to ensure equitable results as technology and business models and the international tax cooperation landscapes evolve;
 - 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;
 - ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable development;
 - require transparency and accountability of all taxpayers, while respecting the rights to privacy and other fundamental human rights.

Substantive elements of the Framework Convention

10. The framework convention should include commitments on:
[fair allocation of taxing rights, including equitable taxation of multinational enterprises;
effective taxation of high-net worth individuals;
ensuring that tax measures contribute to addressing environmental challenges;
transparency and exchange of information for tax purposes; and
effective prevention and resolution of tax disputes.]

Capacity building

11. Recognizing that respect for tax sovereignty implies that inclusive and effective participation in international tax cooperation requires procedures that take into account the different needs, priorities and capacities of all countries to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference.

12. The framework convention therefore should include provisions regarding the entity or entities that have primary responsibility for, and funding for, supporting Member States, especially developing countries, in their efforts to build capacity on relevant international tax practice and related issues to ensure that they have adequate capacity to participate effectively in international tax cooperation and implement the framework convention.

Structural elements of the Framework Convention

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; and procedures for amendments and adoption of protocols.

Specific priority areas to be addressed in early protocols

14. Early protocols on a small number of specific priority areas ~~should~~ could be developed ~~simultaneously~~ with ~~sequentially after~~ the negotiation of the framework convention. The following are specific priority issues to be addressed through such early protocols:

- 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.

Other areas that could be addressed in future protocols

15. The following additional topics might be the subject of future protocols under the terms of the framework convention:

- tax measures on environmental and climate challenges;

Commented [AIE1]: It is of our view that the items outlined in Article 14 of the Terms of Reference are not conducive to being developed simultaneously with the Framework Convention. With regard to the items outlined in Article 14, our prevailing perspective is that it would be more appropriate to prioritize addressing the Framework Convention initially, and subsequently proceed with the additional protocols.

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exchange of information for tax purposes;
mutual administrative assistance on tax matters; and
harmful tax practices.

Approaches and time frame for negotiation

16. The framework convention should be elaborated by a Member State-led negotiating committee, in accordance with established practice. 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 early protocols to the General Assembly for consideration [at its [81st] Session].

17. The intergovernmental negotiating committee ~~should~~ could begin negotiating the early protocols described above ~~at the same time as it begins~~ sequentially after the negotiation of the framework convention, with the aim of finishing the negotiation of such protocols no later than [six months] after the conclusion of the negotiation of the framework convention, to optimize coordination between the documents.

18. The bureau of the intergovernmental negotiating committee should consist of a chair, three vice- chairs and a rapporteur, elected on the basis of equitable geographical representation.

19. Member States should be fully engaged in the negotiation of the framework convention and endeavor to ensure continuity in their representation.

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.

Resources to support the work of the negotiating body

21. The Secretary-General should be requested to provide the intergovernmental negotiating committee with the necessary facilities and resources to support their work.

22. Member States and other relevant stakeholders in a position to do so should be encouraged to assist in ensuring the full and effective participation of developing countries, including in particular the least developed countries, in the negotiation of the framework convention, including by covering travel and local expenses and through capacity-building.

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