

Note on Chair's Proposal for Rev.2 of the Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Week 2 of the Committee's Second Session focused on a "rev-based negotiation," with a view to agree *ad referendum* as many paragraphs as possible during the first reading of the text (Chair's proposal for Rev.1). Delegations explained and responded to each other's proposed textual changes and the logic behind them, with contributions to the discussions also from international organizations, civil society, academia, business and other relevant stakeholders.

Following on the Committee's work last week, the present draft (Chair's proposal for Rev.2) is shared as the basis for a second reading during Week 3. Rev.2 includes the following:

- **improvements to language and overall organization of the draft ToR, as well as technical corrections, that received no objections.**
- **proposed revisions to reflect where the Committee is now on areas of divergent views and the compromise emerging from the discussions, including on the appropriate degree of flexibility provided in the draft ToR to the future negotiating committee.**
- **no revisions to areas where Rev.1 was robust enough and showed a middle ground for all Member States;**
- **no revisions to a few areas where a clear compromise has yet to emerge and Member States are working to resolve this (including paragraphs 9c and 20); and**
- **no textual proposals made by delegations where those proposals did not seem to have support in the Committee.**

Week 3 will thus focus on the second reading of the text, aiming to reach agreement on all sections and with a view to finalizing the text by mid-day on Wednesday, 14 August 2024, followed by a silence procedure.

The Committee will have before it the final draft text of the ToR and the draft procedural report on the Second Session on Friday, 16 August 2024. The report, which will contain the final draft ToR, will be submitted to the General Assembly for its consideration during its seventy-ninth session.

Revised Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (as of ~~3-11~~ August 2024)

I. INTRODUCTION~~Introduction~~

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. *(Agreed ad ref)*
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. *(Agreed ad ref)*
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. *(Agreed ad ref)*
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. *(Agreed ad ref)*
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 a United Nations framework convention on international tax cooperation:

II. STRUCTURAL ELEMENTS OF THE CONVENTION

Preamble

6. The text of the framework convention should ~~be reflective~~reflect, *inter alia*, ~~of~~ the following General Assembly resolutions:
 - ~~a.~~——78/230 of 22 December 2023 on “Promotion of inclusive and effective international tax cooperation at the United Nations”;
 - ~~b.~~——77/244 of 30 December 2022 on “Promotion of inclusive and effective international tax cooperation at the United Nations”;
 - ~~c.~~70/1 of 25 September 2015 on “Transforming our world: the 2030 Agenda for Sustainable Development”; and
 - ~~d.~~——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 ~~objectives~~purposes. In that regard, it should:

- a. Establish fully inclusive and effective 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;
- 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 challenges to strengthening domestic resource mobilization.

Principles

8. A United Nations framework convention on international tax cooperation should include a clear statement of the principles that guide the achievement of framework convention in achieving its objectives.

9. Efforts to achieve the objectives of the framework convention therefore should:

- a. be universal in approach and scope and should fully consider the different needs, priorities, and capacities of all countries, ~~including particular~~ developing countries, in particular countries in special situations;
- b. recognize that every Member State has the sovereign right to decide ~~its tax~~the policies and practices ~~of its domestic tax system~~, and the responsibility to respect the sovereignty ensure that such policies and practices do not undermine the effectiveness of the tax base or system of each other Member States in such matters;
- ~~{~~c. be fully aligned with international human rights law and States' existing commitments under human rights conventions to respect, protect and fulfil all human rights for all people in all countries;~~}~~
- d. take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects;
- e. be sufficiently flexible, resilient and agile to ensure equitable and effective results as societies, technology and business models and the international tax cooperation landscapes evolve;
- f. contribute to achieving sustainable development by ensuring e-fairness in allocation of taxing rights under the international tax system ~~that contributes to achieving sustainable development~~;
- g. provide for rules that are as simple and easy to administer as the subject matter allows;

h. ~~increase~~ensure certainty for taxpayers and governments; and

i. require transparency and accountability of all taxpayers.

Commitments

~~Substantive elements of the Framework Convention~~

10. The framework convention should include commitments to ~~achieve~~operationalize its objectives. Commitments on the following subjects, *inter alia*, should be ~~addressed~~considered:

~~f~~a. fair allocation of taxing rights, including equitable taxation of multinational enterprises;

~~b.~~ addressing tax evasion and avoidance by effective taxation of high-net worth individuals and ensuring their effective taxation in relevant Member States;

~~c.~~ ensuring that tax measures contribute to addressing environmental challenges; ensuring that tax measures contribute to achieving sustainable development in its three dimensions: economic, social and environmental;

~~d.~~ effective mutual administrative assistance in tax matters, including with respect to effective transparency and exchange of information for tax purposes;

~~dbis.~~ effective collaboration in addressing tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices; and

~~e.~~ effective prevention and resolution of tax disputes.

Capacity building

11. ~~Respect for tax sovereignty implies that i-~~ 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 institutional mechanisms to support 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 to implement the framework convention.

~~Structural~~Other elements of the Framework Convention

13. The framework convention should also include, ~~inter alia, at least~~ 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; Conference of the Parties; Secretariat;

subsidiary bodies; dispute settlement mechanisms; and procedures for amendments to the framework convention and adoption of protocols; and final provisions.

III. EARLY PROTOCOLS

Specific priority areas to be addressed in early protocols

14. ~~pre. Protocols are legally binding instruments, separate from the framework convention, that will supplement, operationalize and/or elaborate the framework convention.~~

~~14. Early protocols on~~Two early protocols, on subjects drawn from the following specific priority areas, ~~a small number of specific priority areas~~ should be developed simultaneously with the negotiation of the framework convention. ~~The subjects for these early protocols should be drawn from the following specific priority issues:~~

~~b. taxation of income derived from cross-border services;~~

~~a. + b. alt taxation of income derived from the provision of cross-border services and taxation of the digitalized economy;~~

~~b. measures against~~ tax-related illicit financial flows;

~~d. c.~~ prevention and resolution of tax disputes; and

~~ed. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States~~taxation of high-net worth individuals.

15. Protocols on the following topics, *inter alia*, could be considered:

a. tax measures on environmental ~~and climate~~ challenges;

b. exchange of information for tax purposes;

c. mutual administrative assistance on tax matters; and

d. harmful tax practices.

IV. APPROACHES AND TIME FRAME FOR NEGOTIATIONApproaches and time frame for negotiation

16. The framework convention should be elaborated by a Member State-led negotiating committee. The intergovernmental negotiating committee would ~~meet be convened in New York and initially~~ in 2025, ~~and 2026 and 2027~~ meet for ~~{at least 3 number}~~ sessions ~~per year~~, of a duration of ~~no more than~~ 10~~{number}~~ working days ~~per each session~~, and ~~make all efforts to~~ complete its work and submit the final text of the framework convention and ~~of the two~~ early protocols to the General Assembly for ~~its~~ consideration ~~{at its {81st} Session}~~ in the first quarter of the eighty-second session.

~~17. The intergovernmental negotiating committee should begin negotiating the early protocols 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 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~~ eighteen 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.

19 bis. International organizations and civil society are encouraged to contribute to the work of the intergovernmental negotiating committee in accordance with established practices.

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.

V. RESOURCES TO SUPPORT THE WORK OF THE NEGOTIATING COMMITTEE~~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, including technical secretariat from the Department for General Assembly and Conference Management and substantive secretariat from the Department of Economic and Social Affairs, to support its work. *(Agreed ad ref)*

22. Member States and other relevant stakeholders in a position to do so ~~should be~~ are 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.