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Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

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Chair's Proposal for Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

15 August 2024

I. 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.
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 a United Nations framework convention on international tax cooperation.

II. STRUCTURAL ELEMENTS OF THE CONVENTION

Preamble

6. The text of the framework convention should reflect, inter alia, 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. 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 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 developing countries, in particular countries in special situations;
- b. recognize that every Member State has the sovereign right to decide its tax policies and practices, while also respecting the sovereignty of other Member States in such matters;
- c. in the pursuit of international tax cooperation be aligned with States’ obligations under international human rights law;

- 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 fairness in allocation of taxing rights under the international tax system;
- g. provide for rules that are as simple and easy to administer as the subject matter allows;
- h. ensure certainty for taxpayers and governments; and
- i. require transparency and accountability of all taxpayers, while taking into account appropriate safeguards for taxpayers.

Commitments

10. The framework convention should include commitments to achieve its objectives. Commitments on the following subjects, inter alia, should be:
- a. fair allocation of taxing rights, including equitable taxation of multinational enterprises;
 - b. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States;
 - c. international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner;
 - d. effective mutual administrative assistance in tax matters, including with respect to transparency and exchange of information for tax purposes;
 - e. addressing tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices; and
 - f. effective prevention and resolution of tax disputes.

Capacity Building

11. 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 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.

Other Elements

13. The framework convention should also include, inter alia, 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. PROTOCOLS

14. Protocols are separate legally binding instruments, under the framework convention, to implement or elaborate the framework convention. Each party to the framework convention should have the option whether or not to become party to a protocol on any substantive tax issues, either at the time they become party to the framework convention or later.

15. Two early protocols should be developed simultaneously with the framework convention. One of the early protocols should address taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.

16. The subject of the second early protocol should be decided at the organizational session of the intergovernmental negotiating committee and should be drawn from the following specific priority areas:

- a. taxation of the digitalized economy;
- b. measures against tax-related illicit financial flows;
- c. prevention and resolution of tax disputes; and
- d. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

17. Protocols addressing the following topics, inter alia, could be considered:

- a. tax cooperation on environmental 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 NEGOTIATION

18. The framework convention should be elaborated by a Member State-led negotiating committee. The intergovernmental negotiating committee would meet in 2025, 2026 and 2027 for at least 3 sessions per year, of a duration of no more than 10 working days per session, and 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 in the first quarter of the eighty-second session.

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

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

21. International organizations, civil society and other relevant stakeholders are encouraged to contribute to the work of the intergovernmental negotiating committee in accordance with established practices.

22. 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.

VI. RESOURCES TO SUPPORT THE WORK OF THE NEGOTIATING COMMITTEE

23. 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.

24. Member States and other relevant stakeholders in a position to do so 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.
