



Mr. Ramy Youseff,

Chair of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols (INC) and

Mr. Daniel Nuer, Co-Lead of Workstream I,

United Nations Headquarters,
New York, USA,

Cc: Permanent Representatives and Observers to the UN in New York

Sirs,

Re – Call for written Inputs from Stakeholders and Member States on the Issue Notes from Workstream I: Framework Convention.

Abstract

1. The African Union (AU) appreciates the opportunity to submit comments below on the Draft Issues Note of Workstream I on behalf of our members and allied organizations.
2. We commend the prioritisation of commitments but emphasise that equal attention must be given to all items set out in the Terms of Reference (ToR), including procedural and institutional matters under paragraph 13. Commitments should not be limited to paragraph 10 but expanded, framed in broad and flexible language that enables differentiated implementation pathways tailored to national contexts.
3. On dispute prevention and resolution, we support a concise but broadly framed commitment to fair, inclusive, effective, and timely processes, with specific mechanisms to be developed under Protocol II. Similarly, on the fair allocation of taxing rights, we call for broad commitment language that affirms source-based taxation and accommodates evolving business models, while avoiding rigid definitions at this stage which may tie the commitment to a specified protocol.
4. On sustainable development, we support the proposed language in the Issues Note draft as sufficiently broad and encompassing. We nonetheless urge for strong alignment with the *Compromiso de Sevilla*, which affirms international tax cooperation as central to domestic resource mobilisation and development finance. Embedding this vision in the Framework Convention will ensure coherence with the broader Financing for

Development agenda, Agenda 2030, and Africa's Agenda 2063, while reinforcing fairness, equity, and inclusivity in global tax governance.

General comments:

5. As general comment we state as follows-

- a. *Scope:* we note the prioritization of commitments, issues flowing from commitments, before procedural issues.¹ In response, we commend the order of the priorities, but we call for the workstream to ensure that sufficient time and attention is given to all items specifically mentioned in the ToR. This should include all items mentioned in paragraph 13 of the ToR² including conference of the parties; secretariat; subsidiary bodies, etc except for items like definition which must necessarily come towards the end of the workstream.
- b. *Commitments:* we call for the workstream to note that commitments must not be constrained to items listed in paragraph 10 of the ToR as the use of the phrase *inter alia* rightfully implied that there should be more items on commitment. To this extent, we call for the inclusion of all items listed in paragraph 10 of the ToR plus additional items as may be necessary including commitments to procedural issues that would help in the implementation of the convention. Similarly, we emphasize that the language for commitments must be framed in broad or generic form to allow for flexibility and adaptability to future circumstances. This approach will also ensure that members may deploy a basket of options in meeting their obligations under the convention. Those options may include through signing a detailed protocol on dispute prevention and resolution,³ through an existing framework including domestic aspects or through a mechanism to be established as part of the UNFCITC. Language like ***"Parties commit to fair, inclusive, effective, efficient and timely prevention and resolution of disputes for taxpayers and tax authority including through establishment of a mechanism for dispute prevention and resolution"*** would be enough with the elaboration on various approaches to achieving that left for the protocol under WSIII.

6. ***Specific comments:*** to answer the specific questions posed in paragraphs 10, 15 and 18 of the Issue Note, we respond as follows:

- a. *Dispute Prevention and Resolution:*
 - i. Whether the commitments described in paragraph 9 effectively address the concerns that have been expressed in the workstream with respect to effective prevention and resolution of tax disputes. **Response:** No.

¹ See paragraphs 2-4 of the Workstream I Co-Leads' Draft Issues Note

² See Terms of reference for a United Nations Framework Convention on International Tax Cooperation, A/AC.298/2 found at <https://financing.desa.un.org/document/terms-reference-united-nations-framework-convention-international-tax-cooperation>

³ Like the one expected from WSIII

commitment section of a treaty, in our view, is not necessarily a place for the elaboration of motivation or justification for the commitment itself. The more effort to include motivation in the commitment; the more circumscribed it becomes as the commitment will always be construed in the light of those motivations, thereby negating flexibility and adaptability to future circumstances and other related contexts.

- ii. Whether the commitments described in paragraph 9 would provide sufficient support for the early protocol being developed in Workstream III. **Response:** in our view, a broadly framed language committing to fair, inclusive, effective, efficient and timely prevention and resolution of disputes for taxpayers and tax authority including through establishment of a mechanism for prevention and resolution would give the needed base for Protocol 2.
- iii. Whether there are additional concerns regarding effective prevention and resolution of tax disputes that should be addressed in that article of the Framework Convention. **Response: No.** the dispute resolution commitments under the Framework Convention need not be too detailed or unnecessarily verbose. A broad-based language capturing the key element of the commitment would suffice while the details are left for the Protocol.

b. *Fair Allocation of Taxing Rights:* questions were asked:

- i. whether the elements included in paragraph 14 provide a useful outline of a commitment to this topic.
Response: we urge the workstream not to go into explanation of how to determine where business activity takes place or into any form of definition in the context of the commitments including on fair allocation of taxing rights. We further urge the workstream to stick to what has been stated in the ToR or to be as close to what was stated as possible, e.g. *“Parties commit to Fair allocation of taxing rights, including equitable taxation of multinational enterprises”* What constitutes fair allocation of taxing rights and how to determine the same should be subject of discussion across different protocols, initiatives and instruments under the UNFCITC, each taking up its meaning from the context of its peculiarity.
- ii. whether there are additional concerns regarding the fair allocation of taxing rights that should be addressed in that article of the Framework Convention. **Response:** while not advisable, any specific mention of items under this commitment must show that those items mentioned are only indicative and not conclusive; it must also include rebalancing of taxing right under the digital economy, allocation of taxing rights based on real economic activity, including user participation and value creation in market jurisdictions and other measures that guarantees right to tax for source jurisdictions.

- c. *Sustainable development*: the question was whether there are additional aspects of international tax cooperation approaches that contribute to sustainable development that should be addressed in additional paragraphs of that article of the Framework Convention. **Response:** we agree with the language draft provided in paragraph 17 of the Issue Note as sufficient to cover every aspect *and encourage that it be reinforced by referencing the Compromiso de Sevilla for Action, which rightly identifies tax cooperation as central to sustainable development and calls for action on transparency, capacity building, and equitable allocation of taxing rights in favour of developing countries.*