

## **UN INC Workstream I – Framework Convention on International Tax Cooperation**

### **Co-Leads' Draft Issues Note – Ireland's comments**

#### **Abstract**

Ireland wishes to thank the Co-Lead, Chair and Secretariat for facilitating this work on the Framework Convention, including the drafting of this issues note for discussion at the first session at the August plenary.

Ireland agrees with others that the commitments should all be high-level in nature and avoid conflating commitments with standalone actions or protocols that may be developed under the Convention. While we acknowledge the benefits of conducting a scoping exercise which is broad in nature, Ireland maintains that a level of caution should be employed regarding the capacity of the group to progress numerous commitments, particularly where these are expansive or drafted as stand alone actions, within the prescribed timeline available. The list of commitments to be addressed at this point cover a wide spectrum of issues which includes not only all the subjects described under Paragraph 10 of the TOR but also new additional proposals. Such an approach raises some concerns as to whether productive discussions and useful outcomes may be found on all of these issues given the capacity of participating jurisdictions and the timeframe envisaged for this work.

Ireland identifies a number of concerns relating to the specific discussions on commitments which we believe don't fully represent the discussions of all countries at the working groups and which are outlined in the general comments provided.

Ireland also supports calls for the continued need for broad and substantial on-going consultation in relation to the commitments as work is progressed over the coming months.

#### **General comments**

##### ***Principles***

Paragraph 9 of the Terms of Reference (ToR) refers to guiding principles which Ireland fully agrees with. We consider that these agreed principles should form part of our discussions throughout the negotiations. In particular, we believe that maintaining a focus on these principles during this scoping exercise and drafting of commitments is useful, noting the specific references to certain aspects which are not listed as topics of commitments at Paragraph 10, that is: full consideration of the needs, priorities and capacities of all countries; respecting the tax sovereignty of Member States; respecting international human rights law; acknowledging the evolving international tax environment and ensuring equitable and effective outcomes by employing a flexible approach; provision of rules which are simple from an administration perspective; and ensuring certainty for taxpayers and governments.

It is important to take existing multilateral agreements into consideration; and other work which is progressing to avoid duplication (e.g. FHTP work) and use expertise and existing tools – also in the ToR.

### **Commitments**

In this regard, Ireland would express a preference for broad drafting of Commitments, which we consider useful for several reasons. Ensuring the Framework Convention respects tax sovereignty is essential from our perspective; and future-proofing the Framework Convention will ultimately lend greater certainty to businesses and tax administrations, an overarching useful outcome for the FC.

Ireland acknowledges that the ToR also sets various topics which the Framework Convention (FC) could include as Commitments (Paragraph 10), which are specifically referenced in the Issues Note. We appreciate that all topics have not been discussed at the same level of detail during the intersessional meetings to date, and welcome additional work on the other topics before they are included as Commitments in the FC.

While we acknowledge the benefits of conducting a scoping exercise which is broad in nature, Ireland maintains that a level of caution should be employed regarding the capacity of the group to progress numerous commitments, particularly where these are expansive or drafted as stand alone actions, within the prescribed timeline available. The list of commitments to be addressed at this point cover a wide spectrum of issues which includes not only all the subjects described under Paragraph 10 of the TOR but also possibly new additional proposals. Such an approach raises some concerns as to whether productive discussions and useful outcomes may be found on all of these issues given the capacity of participating jurisdictions and the timeframe envisaged for this work.

Moreover, any technical or operational detail is more appropriate for discussion alongside the Protocols (Workstream II/Workstream III).

### ***Effective prevention and resolution of tax disputes***

While it is understood that the ToR makes distinct references to dispute settlement, the detailed discussions on this should take place at Workstream III, and the drafting of this commitment should reflect the work of Workstream III.

The final sentence of Paragraph 6 states *“The issue of resolution of disputes arising under the Framework Convention itself will be addressed in connection with the third category of provisions mentioned in paragraph 2.”* – this third category of provisions are *“primarily procedural provisions commonly found in multilateral conventions”*. It would be useful to clarify the interaction between this proposed dispute resolution mechanism for disputes

arising under the FC, as several jurisdictions have expressed differences in interpretation regarding the legality in having such an obligation tied to the FC. In addition, several jurisdictions have made clear that they do not wish to be tied to such a mechanism, noting there are existing mechanisms in place (including the *Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union*).

Separately, the first sentence of Paragraph 8 reads *“Moreover, final resolution of a cross-border tax dispute through domestic courts may take years, and there is no guarantee that a court decision will be accepted by any other countries whose tax revenues are at stake, meaning that the risk of double taxation may persist.”*. Ireland agrees that the timing of cross-border tax dispute resolution may be prolonged, however, any court decision regarding the resolution of disputes should be legally binding on both countries.

### ***Fair allocation of taxing rights***

Throughout the Workstream I intersessional meetings, long discussions on ‘fair allocation of taxing rights’ took place, without reaching agreement on a definition of the term. This is generally understood to be one of the most complex debates in international tax cooperation, and a shared interpretation of the word ‘fair’ in this context has yet to be agreed. We recall that previous discussions held at other fora did not reach agreement on the definition of the word ‘fair’, instead noting that different countries have different interpretations. Consideration must be given to the value of conducting a similar debate, which may not be concluded or a definitive outcome reached within the given timeframe.

Paragraph 12 continues to contain highly subjective language and we believe does not fully reflect all of the comments made during the workstream meetings. During these discussions many jurisdictions believe that the discussion on this topic requires consideration of many broader issues beyond simply the balance of taxing rights between the country of supply and demand. Subjective language should be moderated to state the certain aspects of the current system are viewed as unfair by some participants. It is important that clarity is reached on shared interpretations and meanings of terms. Failure to do so will clearly lead to increased disputes and uncertainty for administrations and business alike. The issues note should recognise that such a definition will be extremely difficult to arrive at for the reasons set out above.