

## **Italy's comments on INC – Workstream 1 - Issues Note**

### **Framework Convention**

#### **Abstract**

Italy would like to thank the Secretariat, the Chair and the co-Leads for the work done in preparation of the Issue Notes.

Italy considers vital for the Framework Convention and its protocols to be deeply rooted in principles of stability of the global system, legal certainty and administrability, for both taxpayers and tax administrations.

The Framework Convention should contain high – level commitments to be defined and implemented by different Protocols.

While discussing possible solutions, consideration should be given to existing standard and rules that could be supplemented and integrated by the Framework Convention and its protocols.

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Please find below our comments on the Issues Note.

#### **General comments**

1. In general, the translation in legal terms of the commitments included in the TOR, should be inspired by the key principles of stability of the global tax system, legal certainty and administrability, as well as the recognition of taxpayer rights and safeguards.

2. It is our view that the commitments should be kept at a high-level in the Framework Convention (FC), since the scoping of the provisions, as well as any technical aspects, should be left to the protocols. The FC, as the name suggests, has the function to frame overarching legal obligations and principles, while leaving the details and specific obligations to subsequent agreements or national legislation.

3. The implementation of the different commitments entails different efforts and analysis. Some of the topics included in the commitments are mentioned in very broad terms in the TOR, while it is likely that the precise scope of the implementing provisions will require appropriate time and resources. For instance, it is case for the commitment on sustainable development, which has been prioritized for the August discussion, but also for the commitment to counteract illicit financial flows. In our view, the discussion on the FC, starting from the next sessions of the INC, should be focused on the procedural provisions, including coordination rules aimed at clarifying the relationship with existing legal instruments.

## Specific comments

4. With respect to the proposal for discussion in paragraph 10 of the Issue Note, we think that the FC should acknowledge also within the first categories of provisions (as described in paragraph 2 of the Issue Note) the principles of tax certainty, administrability and stability of the global tax system in order to design the basis for the effective prevention and resolution of tax disputes. Procedural rules as for the resolution of dispute arising under the FC can also be addressed and implementation details should be dealt in the protocol.

5. With respect to **paragraph 15**, the issue of the fair allocation of taxing rights should be based on the principles of fairness, certainty, neutrality and efficiency, leaving to the protocol any allocation aspects, also for digitalized businesses.

6. With respect to **paragraph 18**, concerning the possible approaches in the FC to achieve sustainable development in its three dimensions (economic, social, and environmental) we agree in principle that the global tax systems would need to be aligned with environmental goals, allowing developing countries to increase their tax base while addressing climate change and building a more sustainable future. International conventions designed to combat global environmental problems often used trade and customs unions measures, covering a variety of provisions, ranging from simple reporting requirements of transboundary movements to the use of trade sanctions imposed to change a country's environmental behavior. We believe that for the time being the commitment on sustainable development in the FC should be drafted high-level.

7. With respect to **Section IV**, we are generally concerned about the practical enforceability of any rule aimed at addressing tax evasion and avoidance by high-net worth individuals which is not part of a truly global framework. Since it does not appear realistic to establish a global framework in the short term, we are concerned about possible negative implications of possible measures adopted outside a common framework. For these reasons, we prefer to keep the alignment with the TOR in drafting terms.

As for the effective mutual administrative assistance in tax matters, including with respect to transparency and exchange of information for tax purposes, in our view it should be highlighted that it is essential to build on the existing achievements, and to refer also to the principles of legal certainty, safeguard of taxpayers' rights and administrability. The topic of the exchange of information crosses basic aspects of different commitments. INC should assign priority to discussions on the asymmetries on the exchange of information which some countries complain and on the possible safeguards needed to provide the proper level of confidentiality which is essential for some other countries. Those rules are contingent also for the good functioning of the two protocols under discussion.

On addressing tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices, similar consideration as above may be relevant. In this domain, it should be clear that the mandate to negotiate in the INC is limited to the tax dimension, also taking into consideration that countries

may have constraints to discuss issues that have an impact on criminal law. Therefore, the drafting of the substantive provisions in the FC should not go much further than the commitment in the TOR while the scoping exercise should be left to the future protocol.