

Norway's comments on the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation Workstream I Co-Lead's Draft Issues Note

Norway wishes to express its sincere appreciation to the Chair of the INC, the Co-Lead of Workstream I, and the Secretariat for their dedicated efforts in leading the discussions under Workstream I. We are also grateful for the preparation and presentation of the Draft Issues Note on the Framework Convention (FC). Norway remains supportive of this work and look forward to the discussions in the INC and the continued discussions in Workstream I.

General remarks

Norway appreciated the detailed and transparent discussions held under Workstream I, which have clearly highlighted the diverse needs of Member States regarding the scope of international tax cooperation.

For some countries, such as Norway, a broad network of tax treaties and agreements on exchange of information - both bilateral and multilateral - are used by tax administrations and taxpayers. These treaties and agreements offer a stable and reliable framework for tax certainty and tax cooperation. At the same time, we recognise that other Member States may have more limited tax treaty networks, which can restrict their ability to fully benefit from the opportunities that such frameworks provide.

In this regard, Norway sees merit in undertaking further analysis of the different needs of member states, and how the proposed commitments in para. 10 of the Terms of Reference (ToR) may help address these varying circumstances. It also seems vital to develop Explanatory Statements to the Framework Convention and Protocols in parallel with the negotiations of these instruments. Such an approach would enhance transparency and provide Member States, tax payers and other stakeholders with greater clarity on the content of the Framework Convention and its protocols.

In light of the optionality of Protocols to the Framework Convention, as reflected in para. 14 of ToR, and in recognition of the principle of tax sovereignty in para. 9 b), Norway is of the view that Member States should have the flexibility to fulfil any commitment in the Framework Convention in a manner that aligns with their national circumstances and priorities, including through negotiation of bilateral treaties, participating in existing mechanisms, or adherence to the Framework Convention's Protocols. All mechanisms should be deemed equal, and it should remain with Member States to choose how to meet any commitment. Such flexibility may be instrumental in fostering broad and inclusive participation in the Framework Convention.

Commitment on effective prevention and resolution of tax disputes

This section addresses question a) in para. 10 in the Draft Issues Note, which asks whether the commitments outlined in para. 9 would effectively respond to the concerns raised in the workstream regarding the effective prevention and resolution of tax disputes.

We agree that, in broad terms, the commitments outlined appear relevant in addressing the concerns expressed in the Workstream and described in paras. 7 and 8 of the Draft Issues Note. However, we believe further discussion and analysis would be beneficial before proceeding with drafting of the commitment in the Framework Convention. It is also important to explain the commitment in an Explanatory Statement to the Framework Convention.

Commitments related to dispute prevention and resolution will rely on a combination of domestic measures and access to international tax cooperation. At the domestic level, Governments should provide for transparent and fair legislative processes that allow taxpayers and other stakeholders to provide their point of view. Clear legislation and guidance on the application of tax law, including reporting requirements and documentation, are equally important. Moreover, the digitalisation of tax administrations offers valuable opportunities for streamlining the filing of tax returns and documentation, thereby facilitating tax law compliance and the tax administration's control activities. Also, the tax administration should provide guidance both in advance in the form of issuing guidelines and by engaging with the taxpayer both in advance of and during an audit. Raising awareness about issues and practices that may lead to audits can further support effective dispute prevention.

Instruments for the exchange of information also serve as foundation for cooperation between tax administrations, including through joint audits and other forms of joint compliance efforts, such as exchange of experiences and knowledge of common schemes for tax avoidance and tax evasion. Existing frameworks already provide valuable tools to this end, such as those established under bilateral tax treaties and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. Notably, the latter is open for signature for all countries and currently has 150 signatories. The vast majority are developing countries.

Some dispute prevention measures, such as bilateral or multilateral Advance Pricing Agreement of intra-group transactions, or agreements on Safe Harbour mechanisms for certain categories of intra group services (e.g. low value-added services), hold significant potential for preventing tax disputes. However, the effective implementation of such mechanisms require a common agreed basis, such as Articles 7 and 9 in the OECD Model Tax Convention or the UN Model Tax Convention.

Further analysis could help clarify how the framework convention can most effectively support various measures to prevent and resolve tax disputes, and how these might best be taken forward.

Question b) on whether the commitments described in para. 9 would provide sufficient support for the early protocol being developed:

As the FC and the Protocol are being developed simultaneously, it is not yet possible to provide a definitive assessment.

Question c) of whether there are additional concerns regarding effective prevention and resolution of tax disputes that should be addressed in that article of the Framework Convention:

The commitment should acknowledge that the commitment may be fulfilled through the Protocol, as well as through existing or future bilateral and multilateral instruments.

Commitment on fair allocation of taxing rights

Question a) whether the elements included in paragraph 14 provide a useful outline of a commitment on this topic:

The elements included in para. 14 broadly reflects key aspects relevant to the fair allocation of taxing rights. However, at this stage, the practical implications of the commitment remain unclear, particularly given that fair allocation of taxing rights presumes willingness among jurisdictions to share or limit taxing rights under domestic law. We therefore believe that further discussion of the intent and implications of these elements is needed in the INC during Session 1 and 2, and in Workstream I following the August sessions.

We further note that the principles set out in the ToR para. 9 b) underscore the importance of tax sovereignty. This is a fundamental element that should be reflected when developing the commitment on the fair allocation of taxing rights.

Question b) on whether there are additional concerns regarding the fair allocation of taxing rights that should be addressed in that article of the Framework Convention:

Analysis based on generally accepted economic principles is fundamental to any commitment on the fair allocation of taxing rights in the FC and in the protocols relating to this commitment. Discussions in Workstream I and II have shown significant diversity among Member States' design of tax systems, leading to varying economic impacts for both taxpayers and Governments. To form a view on what a commitment on fair allocation of taxing rights might entail, careful analysis should be undertaken of different approaches to taxation and their impact on tax revenue, trade and investment. On this basis, the commitment should also emphasise the need for economic analysis of the impact of any measures considered to operationalise it.

We view this as a valuable opportunity for the INC to draw upon the existing knowledge and expertise of international bodies such as the World Bank, the IMF, and the OECD, which have long engaged with these issues.

Further, the commitment should acknowledge the flexibility of Member States to fulfil it.

Sustainable development

Invitation to the Committee to discuss the issue of international tax cooperation approaches that contribute to sustainable development and, in particular, 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.

The Draft Issues Note notes that the language in the ToR relating to the commitment adopts language that is referenced in several documents and is well-understood in the UN system.

The specific language is *“contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner”*.

As this is language that is often used and well-understood in other contexts, we believe that it is useful if the INC gains more understanding of the implications of such a commitment in pursuing international tax cooperation, including how such commitments have been reflected in other UN Conventions. It would be helpful if the Secretariat could expand on and give an overview of how the issue of sustainable development has been reflected in relevant conventions.