

**Written comments on the draft UN Framework Convention**

Israel welcomes the opportunity to provide a set of comments on the draft Framework Convention and Protocols. These initial comments are intended to support the Secretariat's work at this initial phase.

We thank the Secretariat for coordinating the discussions on the drafts and for sharing the papers ahead of the session in Nairobi.

We thank the Chair of the Committee and the Co-chairs of the Workstreams for their efforts in ensuring effective discussions.

**The Framework Convention**

**Abstract**

- Status of the Framework Convention (FWC) provisions- should be high-level commitments rather than binding/mandatory ones.
- Optionality of Protocols - ensure that the protocols are effectively optional.
- Explanatory notes to the FWC – should be prepared concurrently with the drafting of the convention.
- A clear statement in the FWC affirming that the commitments it contains shall not supersede any existing treaties, agreements, or other legal instruments.
- We cannot ignore longstanding political commitments and engagements undertaken in other fora.
- We reiterate the importance of economic and legal analysis to support the committee's discussions.

**Articles**

- Article 4 - should take a balanced approach, acknowledging all nexus factors for taxation, including the source State and the State of residence. Clarity in this Article is very important.
- Article 5 - Taxing high-net-worth individuals is primarily a domestic issue. Enhance cooperation while avoiding duplication.
- Article 6 - Should focus on articulating broad principles for administrative cooperation. Should retain safeguards common to articles focused on administrative cooperation.
- Article 7 – The terms in the FWC should be defined, including 'Illicit Financial Flows', 'Tax Avoidance', and 'Tax Evasion'.

- Article 8 – We support the principle stated in paragraph 1. Keep to high level commitment.
- Article 10 - We seek more clarity.

### **General comments**

We noticed divergent views regarding the status of the FWC provisions. We acknowledge the Chair's explanation that the FWC provisions constitute commitments intended to serve as obligatory stand-alone rules.

To implement those obligations, a protocol or other instrument is contemplated. Although it is envisaged that all protocols will be optional, if the FWC creates obligations that require a protocol (such as in cases where no other legal instrument exists between two parties), the protocols seem to be the only way to fulfill the FWC provisions.

The legal force of the FWC will inherently determine the level of commitment and specificity included in the negotiated text.

To allow for broad acceptance by Member States' governments, the scope of commitments must be established at the outset and must guide the negotiation of the FWC. Does the FWC constitute high-level proclamations or does it prescribe or restrict taxing rights?

Explanatory notes or commentary to the FWC should be established. The work on the explanatory notes should proceed in parallel with the formation of the FWC, capturing the parties' intentions as they become apparent in real time. These explanations will be necessary to facilitate adoption by governments and assist implementation.

We request that the FWC include a clear statement that the commitments contained therein will not supersede existing treaties, agreements, and legal instruments.

We expect Article 12 to clarify the relationship with Double Tax Treaties (DTCs). We note that finalizing Article 12 will require a review of the proposed FWC to ensure it is coherent with the agreed commitments. Moreover, it is impossible to ignore longstanding political commitments and engagements undertaken in other fora. Notably, the support of Inclusive Framework countries for the G20/OECD Two-Pillar Solution.

Concurring with comments from other Member States, we reiterate the importance of economic and legal analysis to support the committee's discussions, particularly regarding the interaction between commitments in the FWC and other international agreements, and with regard to the potential impact on global trade.

Concerning the mandate and objectives of the CoP – although we did not discuss Article 17 of the FWC during the meetings in Nairobi, the CoP was referenced in the discussions. We would like to note that this article should be drafted with great care,

particularly regarding the scope of mandate to be granted to the CoP, to avoid undermining the sovereignty of the states.

#### **Article 4**

While the concept of fair allocation of taxing rights mentioned in the article's title appears indisputable, many terms in the proposed text carry interpretations and connotations that remain unclear, rendering the text difficult to accept. For instance, what is the distinction between "business activity" and "economic activity"? What is "value creation"?

Furthermore, while the Article grants taxing rights based on various criteria, it fails to address allocation between the source State and the State of residence. The Article should take a balanced approach, acknowledging all nexus factors for taxation. The term "revenues are generated" could be interpreted in a number of ways (as demonstrated in the Nairobi plenary meetings). Clarity in this case is crucial, as this provision is sensitive and will attract scrutiny from governments and the public. It must be made clear that fair allocation includes the rights of resident jurisdiction, and that a fair allocation should be formulated.

It cannot be assumed at this early stage of formulating the FWC that all business or economic locations will necessarily be attributed taxing rights in each and every case.

Commitments should remain at a high level and not directly attribute taxing rights to avoid conflict with existing DTCs.

The commitment should focus on formulating principles for the fair allocation of taxing rights between states, acknowledging that every state has the right to tax, subject to an agreement signed by that state.

#### **Article 5 -**

Taxing high-net-worth individuals is primarily a domestic issue. Exchange of Information (EOI) should be applied to this end, and cooperation should be enhanced. We think all references to EOI should be compiled in a dedicated article to avoid duplication.

Paragraph 2 – should be less prescriptive to maintain a high-level statement, it should contain fewer details, and refer to exploring steps to be taken.

#### **Article 6 –**

We agree with the view that this Article should focus on articulating broad principles for administrative cooperation. We therefore recommend aligning the language of this article with that of the Convention on Mutual Administrative Assistance in Tax

Matters (MAAC), and further details should be a matter for future protocol or another instrument.

We wish to emphasize the need to retain safeguards common to articles focused on administrative cooperation, respecting states' domestic legal conditions on issues such as taxpayer rights and data protection. We also express our concern that bypassing safeguards and reservations established in existing frameworks (e.g., the MAAC) will make the FWC difficult to ratify.

#### **Article 7 –**

This Article refers to 'Illicit Financial Flows', 'Tax Avoidance', and 'Tax Evasion'. We believe these terms should be defined in the FWC, as discussions in Nairobi revealed differing understandings among States.

#### **Article 8 –**

We support the principle stated in paragraph 1 and recognize the importance of international cooperation.

We propose that the wording in paragraph 1 be changed to "exploring" effective tools instead of "developing", recognizing the significant work already undertaken in other fora.

Paragraph 2 – the end of sentence (after the words 'substance-based') should be deleted – we agree with the substance-based principle, but specific operative criteria necessitate further discussion and agreement on clear operative measures.

Paragraph 3 – it is difficult to comment on this article before addressing the work in other forums. This paragraph directly highlights the need to clarify the relationship with the work of existing frameworks to avoid duplication.

#### **Article 10 –**

We seek clarity regarding the scope of the Article and its reference to domestic laws, especially how declaratory statements concerning domestic law are applicable.