

**Portuguese delegation written comments on the 24th October INC Workstream I Co-Leads'
Draft Framework Convention Template**

Abstract: This document contains the evaluation of some elements of the INC Workstream I Co-Leads' Draft Framework Convention Template which the Portuguese delegation to the INC believe may enhance next version of the Template, in a view to better foster discussions and INC decisions that are to happen after the third INC plenary session (November 2025).

In respect of Articles 1 and 2

We understand that these articles will be drafted following the ToR in respect of 'Objectives' and 'Principles'. However, we would like to keep open the possibility of adding some items to these articles as needed while we advance in our discussions towards a Framework Convention (FC).

In respect of article 4 (Fair allocation of Taxing Rights)

It appears that the FC, in any of its parts or sections, is not an adequate legal instrument to state that every jurisdiction has a right to tax the income generated in any given activity. In fact, only each jurisdiction has the legitimacy to determine its rights to tax, making it hard to see what the FC benefit in this respect would be.

On the other hand, this article explicitly pertains to what is to be perceived as being a fair allocation of taxing rights, and not about the recognition or determination of taxing rights, something that is to be dealt with by each jurisdiction.

Being this article referred to the fair allocation of taxing rights, the current draft also seems unbalanced, since it does not recognize as fair the allocation of taxing rights that results of the consideration, mutually agreed by States, of some other relevant elements for that effect. For instance, no reference to residence, to the situation of a permanent establishment or to the situation of a real estate or asset – elements over which States mutually agree to allocate their taxing rights – is present in this article. That circumstance may entail that allocations of taxing rights based on those absent elements (or based in any other element that is mutually agreed by the concerned States) are to be perceived as unfair under the FC. Such interpretative outcome must be prevented to avoid conflicts with existing bilateral or multilateral conventions.

In respect of article 6 (Mutual Administrative Assistance)

We believe this commitment to be at the very heart of an actual tax international cooperation.

In our view, administrative assistance between tax authorities is already an ongoing effort and a hard conquest reality.

As such, we would like to have an assurance that its fulfilment is compatible with the standards that are already in force in most States as a result of the widely global ongoing efforts and commitments that were assumed under other international *fora*, regional organizations and bilateral agreements and the IT structures that are currently used.

In respect of exchange of information, for instance, we are committed to close the gaps on the current network, namely through capacity building and by expanding the scope of some modalities of exchange of information, but it necessary to avoid concurrent structures for the same effect and to preserve the legitimacy, functionality and mutual benefits of exchange of information relationships that are already in place.

Additionally, it is crucial to have a clear understanding of the nature of these commitments that are to be assumed by the Parties to the FC, moreover because its current drafting seems to point out to some sort of self-executing provisions, given that it is too detailed to be a commitment (not being in accordance with the high-level nature of these commitments, as steamed out of

the ToR and the Secretary General Report) while, at the same time, it doesn't not allow Parties to engage in meaningful exchanges of information if solely based on this article terms.

Finally, while this article already refers to the need to ensure the necessary level of protection of personal data, we believe that it would be essential to ensure that any information exchange meets core principles on confidentiality and data protection.