

Introductory Note to the Bureau’s Proposal for the Revised Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation by the Chair of the Ad Hoc Committee, Mr. Ramy M. Youssef, 18 July 2024

In preparation for the Second Session of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, a Bureau’s proposal for the “zero draft ToR” was released for comment on 7 June 2024. The over 100 inputs received from Member States and other stakeholders are posted in their original language on the Committee website.

Following on the Committee’s First Session and the written input received on the zero draft, the twenty-member Bureau of the Committee has been working to prepare a revised draft ToR, which will be the basis for the discussions and negotiations during the Second Session of the Committee, to be held at United Nations Headquarters in New York from 29 July to 16 August 2024.

With great appreciation for the work of all Members of the Bureau, and for all Member States and stakeholders for their inputs, I share the Bureau’s proposal for the revised draft ToR. This revised draft ToR reflects the Bureau’s efforts to achieve consensus on the draft text to be put before the Committee for discussion, yet it does not necessarily represent the unanimous view of all Bureau Members.

To deliver on the Committee’s mandate in accordance with General Assembly resolution 78/230, the revised draft ToR set out the basic parameters and mechanisms of a United Nations Framework Convention on International Tax Cooperation. The Committee aims to provide guidance to the negotiation of the framework convention without unduly limiting flexibility.

This draft does not necessarily represent the unanimous view of all Bureau members.

Revised Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Introduction

1. In adopting resolution 78/230, “Promotion of inclusive and effective international tax cooperation at the United Nations,” the General Assembly emphasized that developing a United Nations framework convention on international tax cooperation is needed in order to strengthen international tax cooperation and make it fully inclusive and more effective.
2. The General Assembly recognized in the resolution that developing a framework convention will also help in accelerating the implementation of the Addis Ababa Action Agenda on Financing for Development and the 2030 Agenda for Sustainable Development.
3. Therefore, the General Assembly established a Member State-led, open-ended ad hoc intergovernmental committee for the purpose of drafting terms of reference for a United Nations framework convention on international tax cooperation.
4. The General Assembly further requested that the ad hoc intergovernmental committee submit a report to the General Assembly at its seventy-ninth session, containing the draft terms of reference for a United Nations framework convention.
5. The ad hoc intergovernmental committee, having completed its work in accordance with this mandate, now recommends for consideration by the General Assembly the following draft terms of reference for a United Nations framework convention on international tax cooperation:

Preamble

6. The text of the framework convention should be reflective of the following General Assembly resolutions:
 - 78/230 of 22 December 2023 on “Promotion of inclusive and effective international tax cooperation at the United Nations”;
 - 77/244 of 30 December 2022 on “Promotion of inclusive and effective international tax cooperation at the United Nations”; and
 - 69/313 of 27 July 2015 on the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

Objectives

7. A United Nations framework convention on international tax cooperation should include a clear statement of its purposes. In that regard, it should:

- a. Establish fully inclusive and effective international tax cooperation in terms of substance and process;
- b. Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State;
- c. Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing challenges to strengthening domestic resource mobilization.

Principles

8. A United Nations framework convention on international tax cooperation should include a clear statement of the principles that guide the drafting and implementation of the convention so that it achieves its objectives.

9. Efforts to achieve the objectives of the framework convention therefore should:

- be universal in approach and scope and should fully consider the different needs, priorities, and capacities of all countries, in particular countries in special situations;
- recognize that every Member State has the sovereign right to decide the policies and practices of its domestic tax system, and the responsibility to ensure that such policies and practices do not undermine the effectiveness of the tax base or system of other Member States;
- be fully aligned with international human rights law and States' existing commitments under human rights conventions to respect, protect and fulfil all human rights for all people in all countries;
- take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects;
- be sufficiently flexible, resilient and agile to ensure equitable results as societies, technology and business models and the international tax cooperation landscapes evolve;
- ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable development;
- provide for rules that are as simple and easy to administer as the subject matter allows;
- increase certainty for taxpayers and governments; and

- require transparency and accountability of all taxpayers.

Substantive elements of the Framework Convention

10. The framework convention should include commitments on:

[fair allocation of taxing rights, including equitable taxation of multinational enterprises;

effective taxation of high-net worth individuals;

ensuring that tax measures contribute to addressing environmental challenges;

effective transparency and exchange of information for tax purposes;

effective prevention and resolution of tax disputes; and

such other subjects as are necessary or appropriate for the framework convention to achieve its objectives.]

Capacity building

11. Respect for tax sovereignty implies that inclusive and effective participation in international tax cooperation requires procedures that take into account the different needs, priorities and capacities of all countries to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference.

12. The framework convention therefore should include provisions regarding the entity or entities that have primary responsibility for, and funding for, supporting Member States, especially developing countries, in their efforts to build capacity on relevant international tax practice and related issues to ensure that they have adequate capacity to participate effectively in international tax cooperation and to implement the framework convention.

Structural elements of the Framework Convention

13. The framework convention should also include the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources and mechanisms; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for amendments to the framework convention and adoption of protocols.

Specific priority areas to be addressed in early protocols

14. [Early protocols on a small number of specific priority areas should be developed simultaneously with the negotiation of the framework convention. The subjects for these early protocols should be drawn from the following specific priority issues:

taxation of the digitalized and globalized economy;

taxation of income derived from cross-border services;

tax-related illicit financial flows;
prevention and resolution of tax disputes; and
taxation of high-net worth individuals.]

15. The following additional topics might be the subject of future protocols under the terms of the framework convention:

tax measures on environmental and climate challenges;
exchange of information for tax purposes;
mutual administrative assistance on tax matters; and
harmful tax practices.

Approaches and time frame for negotiation

16. The framework convention should be elaborated by a Member State-led negotiating committee. The intergovernmental negotiating committee would be convened in New York and initially in 2025 and 2026 meet for [number] sessions, of a duration of [number] working days each, and make all efforts to complete its work and submit the final text of the framework convention and of early protocols to the General Assembly for consideration [at its [81st] Session].

17. The intergovernmental negotiating committee should begin negotiating the early protocols described above at the same time as it begins the negotiation of the framework convention, with the aim of finishing the negotiation of such protocols no later than six months after the conclusion of the negotiation of the framework convention, to optimize coordination between the documents.

18. The bureau of the intergovernmental negotiating committee should consist of a chair, three vice-chairs and a rapporteur, elected on the basis of equitable geographical representation.

19. Member States should be fully engaged in the negotiation of the framework convention and endeavor to ensure continuity in their representation.

20. Throughout its work, the intergovernmental negotiating committee should take into consideration the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels.

Resources to support the work of the negotiating body

21. The Secretary-General should be requested to provide the intergovernmental negotiating committee with the necessary facilities and resources, including technical secretariat from the Department for General Assembly and Conference Management and substantive secretariat from the Department of Economic and Social Affairs, to support its work.

22. Member States and other relevant stakeholders in a position to do so should be encouraged to assist in ensuring the full and effective participation of developing countries, including in particular the least developed countries, in the negotiation of the framework convention, including by covering travel and local expenses and through capacity-building.