

UN Tax Convention

Minutes from the 2nd and
3rd day of the
organizational session of
the Intergovernmental Ad
Hoc Committee

February 2024

(For ICC Members' use only)



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2nd DAY (Feb. 21st)

General discussion on the focus question which is a starting point for deliberations

TOR should emphasize the need for inclusive and effective international tax cooperation at UN level.

The Chair reported some items based on discussions with members states but these are only initial examples to kick-off the discussion:

- Full consideration of existing of multinational and international arrangements to leverage existence instruments and address gaps and weaknesses in the current existing international tax framework and arrangements.
- Clear and coherent rules that are responsive to changing business models, technological innovations and globalization, while helping to ensure that taxpayers are neither excessively burdened by unclear tax rules nor allowing them to aggressively avoid payment of taxes.
- Maintaining a fair and equitable balance of taxing rights between resident and source countries.
- Developing a precise disputes resolution mechanisms that consider the capacity of developing countries.
- Adopt rules that should be adequate and sufficient to discourage illicit financial flows.
- Addressing challenges related to the digitalization of the economy.
- Addressing the challenges of harmful tax competition between countries.

Opening of the discussion based on the focus question:

What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?

RUSSIA:

Proposals of issues that could fall under TOR:

1. Developing a multilateral international convention reflecting the recent changes to the model based on the work that has been done of the UN Tax Committee of Experts. Thematically speaking, they are interested in the possibility to adopt changes to existing tax agreements (so-called Fast-track instrument currently under discussion within the UN Tax Committee of Experts). If there is support on this proposal they suggest to consult the UN Tax Committee of Experts to determine which list of questions could be included on the multilateral international convention.
2. A platform to exchange knowledge on tax administrations also considered their digitalization and exchange best practices.
3. A platform for exchange of information accessible to all members participating in the process, making sure it's fully transparent.
4. Creating a global base to determine the status of tax residency.
5. Developing tax policy for climate change.
6. Developing of general criteria to acknowledge the possibility of preferential tax regimes.

They stand ready to suggest additional topics.

JAMAICA:

The main issue to look at is the suitability of the advised solutions. The broad range of countries and their specific needs and characteristics (from developing to less developed and developed countries) should be taken into account.

Part of the issues with the OECD IF and the solutions that came out of the OECD IF, is that solutions are not always fit for purpose and countries are not given the opportunity to determine the cost and the benefit and it takes the same amount of resources for a developing country and a developed country to implement that policy.

Countries should be given the opportunity to look at the costs and benefits of the solutions, and have discussions with other government agencies within their jurisdiction so to have a whole of government approach.

Small island developing states: they hope in a recognition that these states have their own peculiar issues which deserves specific consideration and closer look, such as: small tax base, lack of economic alternatives, existential threat and vulnerability to those.

COLOMBIA:

They recognize the importance of adopting multilateral solutions. In relation to digitalization, there have been unilateral measures that have been taken but to tackle the challenges of global mobility of capital and digitalization international cooperation is needed.

The convention should encompass and tackle the major inequalities between individuals but also between the tax powers traditional countries, there should also be a reallocation between residence and source states based on the principle of equity.

Priority should be given to an early protocol on progressive tax measures such as on the taxation of high-net individuals.

UN work on tax should give urgency to mobilize resources to tackle climate change. Polluting behaviors should be taxed. Active expenditure is also needed.

Given the global dimension of this challenge, global measures are needed.

To properly adopt such solutions a Conference of the party would not be sufficient and they suggest the creation of a new financial institution responsible for that.

UK:

The Committee should consider what rights and obligations the content might impose on parties and based on the content the level of participation needed by parties.

This should not be the only possibility for member states to present ideas and they welcome the opportunity to present written input.

Particular attention should be given to climate change and technology.

Sharing best practice and capacity building. The UN could bring different bodies to work together towards this goal.

UN Convention on Anti-corruption could be an example.

BAHAMAS:

Three priorities:

1. Use of blacklist: abolishment the use of blacklist.
2. Predictable rules
3. Equality and transparency in governance. Strong criticism on OECD inclusivity within the IF process.

PRESENTATION PREPARED BY SECRETARIAT ON TORs

- UK asked whether there are other examples of protocols that have been outlined and adopted ahead of a convention and whether there are examples of a convention that has been modified and what would be the procedure.
- Norway has highlighted that they think that TORs should be flexible, especially if pointing at substantive issues that should be addressed in the convention.

Secretariat response:

There are not many examples on the protocols, but they are in the resolution and that is why should be included in the TOR but TOR are also very high level and the protocols can also be included very high level.

Early protocols can give concrete examples that can help the thinking on how the treaty will be operating to support international tax negotiations.

- Switzerland: the TOR will be a list of subjects but not conclusion. Will this be a final list or not? If it is a definite list then it will be already compromising substantive decisions to be made when negotiating the convention.

Secretariat response:

TOR lists are not exclusive. Conference of the Parties can decide to modify and integrate the list. Conference of the Parties keeps giving life to the Framework Convention.

The Framework Convention will provide flexibility to include and address other issues.

The Chair highlighted that flexibility should be given to TOR aligned with the aim of keeping the instrument flexible to adapt to changes due to changes in business models, technological innovation and global economy.

- Jamaica asked on what will happen to the Committee of Experts, whether it will continue, or will be dissolved and newly created as subsidiary.

Secretariat: Tax Committee of Experts is a subsidiary body of ECOSOC, so only ECOSOC can dissolve it. However, the Convention could say that there is the need for a subsidiary body that could the committee of experts and ECOSOC will need to make a decision to suspend that body. The decision in any case will need to be taken by ECOSOC.

DISCUSION ON ANNEX I AND ANNEX II

COLOMBIA: requested the mobilization for financing the attendance in person from developing countries and presented a written proposal for a paragraph on this.

Other countries expressed their preference for consensus or simple majority decision making.

DISCUSSION & ADOPTION OF THE AGENDA FOR THE FIRST SUSTANTIVE SESSION (29 April – 8 May 2024)

Proposed provisional agenda for first session

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- 1. Adoption of the agenda and other organizational matters**
- 2. Structural elements of a framework convention: substantive scoping**
 - a. Procedural elements**
 - b. Substantive elements**
- 3. Consideration of simultaneously developing early protocols**
- 4. General statements**
- 5. Other matters**
- 6. Adoption of the report of the first session**

3rd DAY (Feb. 22nd)

ADOPTION OF ANNEX I AND ANNEX II

Annex I on the proposed outline and modalities of work of the Committee to draft the TORs

The Chair referred to the divergent opinions between the members. They thus proceeded to an oral revision to insert the following sentence at the end of paragraph 1:

Given the importance of international tax cooperation, every reasonable effort should be made within the available timeframe for negotiations to seek consensus on substantive matters in the ad-hoc committee.

This proposal serves as a middle ground given the different positions expressed by members.

Colombia has also proposed the addition of a new paragraph 6B on financial support:

To ensure inclusive participation in the work of the ad hoc committee member states and intergovernmental organizations are encouraged to provide financial support to developing countries to enable in person attendance.

Discussion on the proposed amendments/new paragraphs:

UK: they are supportive of the goal but have doubts on the language given the reference to intergovernmental organizations as they are not present in the room.

US: supports the intervention by the UK and asked for clarification on the modalities.

Colombia: In the text they refer to an invitation not an obligation.

The new paragraph 6b that has been approved now reads:

To ensure inclusive participation in the work of the ad-hoc committee, member states and other relevant stakeholders in the position to do so, are encouraged to provide financial support for developing countries to allow in person attendance.

UK asks for reintegrating some languages as a standalone paragraph:

Considerable importance should be placed to ensure transparency and inclusive participation in the work of the committee.

Australia and Korea: support for the new paragraph.

Bolivia: requests clarification on what type of inclusivity and transparency they are referring to as the other paragraphs and annex already establish these parameters.

Bahamas: no objection on transparency but on inclusivity there is annex II that looks at participation from others so there might be confusion arising from this.

UK: accepts the non-mention of inclusivity.

The new paragraph now reads:

Considerable importance should be placed to ensure transparency in the committee's work.

Annex II has been approved.

Should you have any questions or would like to have further information, do not hesitate to contact Luisa Scarcella (ICC Global Policy Lead – Taxation) by email at luisa.scarcella@iccwbo.org.

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