The 2nd session of negotiations – TOR UN Tax Framework Convention



An overview of what led to a new UN Tax process

- Discussions on transforming the UN Committee of Experts in International Tax Cooperation already taking place during the 2015 3rd International Conference on Financing for Development in Addis Ababa.
- November and December 2022: Approval by the UN General Assembly of a resolution requesting the UN Secretariat to prepare a report on International Tax Cooperation and how this can be strengthened at UN level.
- The reports includes 3:

1. A Comprehensive Convention;

2. A Framework Convention;

3. A Framework.

- These options represent the basis for negotiations within the 78th session of the UN General Assembly.
- Ultimately, Resolution 78/230 has been approved by majority in December 2023 and it calls a Framework Convention on International Tax Cooperation.
- The first step for the drafting of a UN Framework Convention consisted in the setup of an ad-hoc intergovernmental Committee to draft **Terms of Reference (TOR).** These will need to be finalized by August 2024 and be included in a report to be presented at the 79th session of the UN General Assembly starting in September 2024

The Ad-HoC UN Committee

Composition

The bureau of the ad hoc intergovernmental committee shall be made up of not more than 20 members, consisting of a chair, vice-chairs and a rapporteur, elected on the basis of **balanced** geographical representation and taking into account gender balance, with each of the five regional groups equally represented. In red the Chair (Egypt) and rapporteur (Pakistan).

African **States**

- Ghana •
- Egypt
- Kenva
- Morocco

Asia-Pacific States

- Pakistan China (1. session)
- Iran India (1. session) •
- Japan Rep. of Korea (1. session)
- UAE Singapore (1. session)

Eastern Europe States

- Poland
- ٠ Russia
- Estonia
- Belarus ٠

Latin-American & Caribbean **States**

- Chile Mexico (1. session)
- Brazil Peru (1. session) •
- Bolivia Colombia (1. session)
- Jamaica Bahamas (1. ٠ session)

Western & **Other States**

- Germany
- Spain
- Italy •
- Norway

3

1st Session TOR Negotiations

(May 2024)

Substantive Element

Topics for high-level commitment for the Framework Convention

Topics for Early Protocols

Complementarity with existing frameworks and agreements

Procedural Element

Consensus vs Majority

Timeframe (in particular for early protocols)

Objectives

7. A United Nations framework convention on international tax cooperation **should include a clear statement of its objectives**. 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;

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 achievement of its objectives.

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

a. be universal in approach and scope and should fully consider the different needs, priorities, and capacities of all countries, including developing countries, in particular countries in special situations;

b. recognize that every Member State has the sovereign right to decide its tax policies and practices, while also respecting the sovereignty of other Member States in such matters;

c. in the pursuit of international tax cooperation be aligned with States' obligations under international human rights law;

d. take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects;

Principles

e. be sufficiently flexible, resilient and agile to ensure equitable and effective results as societies, technology and business models and the international tax cooperation landscapes evolve;

f. contribute to achieving sustainable development by ensuring fairness in allocation of taxing rights under the international tax system;

g. provide for rules that are as simple and easy to administer as the subject matter allows;

h. ensure certainty for taxpayers and governments; and

i. require transparency and accountability of all taxpayers.

Commitments

10. The framework convention should include commitments to achieve its objectives. Commitments on the following subjects, *inter alia*, should be:

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

b. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States;

c. international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner;

d. effective mutual administrative assistance in tax matters, including with respect to transparency and exchange of information for tax purposes;

e. addressing tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices; and

f. effective prevention and resolution of tax disputes.

Other Elements

13. The framework convention should also include, inter alia, 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;
- Conference of the Parties;
- Secretariat;
- subsidiary bodies;
- dispute settlement mechanisms;
- and procedures for amendments to the framework convention and adoption of protocols; and final provisions.

PROTOCOLS

14. Protocols are **separate legally binding instruments**, under the framework convention, to implement or elaborate the framework convention. **Each party to the framework convention should have the option whether or not to become party to a protocol on any substantive tax issues, either at the time they become party to the framework convention or later**.

15. Two early protocols should be developed simultaneously with the framework convention. **One of the early protocols should address taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.**

What about Article XX discussed within the Committee of Experts and for approval during the October session?

PROTOCOLS

16. The subject of the second early protocol should be decided at the organizational session of the intergovernmental negotiating committee and should be drawn from the following specific priority areas:

a. taxation of the digitalized economy;

b. measures against tax-related illicit financial flows;

c. prevention and resolution of tax disputes; and

d. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

17. Protocols addressing the following topics, inter alia, could be considered:

a. tax cooperation on environmental challenges;

b. exchange of information for tax purposes;

c. mutual administrative assistance on tax matters; and

d. harmful tax practices.

APPROACHES AND TIME FRAME FOR NEGOTIATION

18. The framework convention should be elaborated by a Member State-led negotiating committee. The intergovernmental negotiating committee would meet in 2025, 2026 and 2027 for at least 3 sessions per year, of a duration of no more than 10 working days per session, and complete its work and submit the final text of the framework convention and of the two early protocols to the General Assembly for its consideration in the first quarter of the eighty-second session.

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

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

APPROACHES AND TIME FRAME FOR NEGOTIATION

21. International organizations, civil society and other relevant stakeholders are encouraged to contribute to the work of the intergovernmental negotiating committee in accordance with established practices.

22. 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 COMMITTEE

23. 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.

24. Member States and other relevant stakeholders in a position to do so are 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.

Amendments that were proposed:

Canada:

2 amendments. One on moving paragraph 22 on taking into account work done in other fora to paragraph 10 on Commitments. One on consensus.

VOTE: In favor: 46; Against: 103; Abstention:15

UK:

Inclusion of consensus in the principles.

VOTE: In favor: 50; Against: 103; Abstention:10

- **EU:** 3 separate amendments proposal on the text.
- 1. Safeguards of taxpayers: framework convention should include among its principles reference to right to be heard, fair trial etc.
- 2. Commitments: too strong language in the chapeau. They suggested amending the chapeau.
- 3. Protocols: decision should be taken by the intergovernmental committee to give them time. Suitability of the topics should be assessed.

VOTE: In favor: 50(1) 48 (2) 49 (3); Against: 97(1) 106(2) 94(3); Abstention:11 (1) 10 (2) 11(3)



In Favour 110

Against 8 (Australia; Canada; Israel; Japan; New Zealand; Rep Korea; UK; US)

Abstention 44 (EU; Albania; Argentina; Bosnia-Herzegovina; Finland; Georgia; Liberia; Liechtenstein; Monaco; Montenegro; Norway; Rep of Moldova; San Marino; Singapore; Trinidad Tobago; Turkey)

Next Steps – strictly related to the convention

Adoption of the resolution by 2nd Committee, 5th Committee and UNGA

Formation of the Committee (a chair, eighteen vice-chairs and a rapporteur nominated by regional groups)

Organizational Session of the new negotiating Committee

Negotiations sessions



Provisional Timetable 2024/2025 **10 September:** Opening of the 79th Session of the UN General Assembly (high-level General Debate will be Tuesday, 24 September 2024) - *NYC*

22-23 September: Summit of the Future – Pact for the Future - *NYC*

3 October: UN 2nd Committee starts its work - NYC

14-15 October: ICC Global Tax Commission Meeting - Geneva

15-18 October: UN Committee of Experts on International Tax Cooperation Meeting - *Geneva*

30 October: IFA/OECD/ICC Dialogue (within the IFA Congress 27-31 October) - *Cape Town*

December 2024: Resolutions to be approved by UN GA

January/February 2025: New Intergovernmental Committee to draft the Convention

24 – 27 March 2025: UN Tax Committee of Experts – ICC Global Tax Commission Meeting (dates tbc)

30 June-3 July: Fourth International Conference on Financing for Development - *Spain*