

Submission by The Kingdom of the Netherlands UN Zero Draft Terms of Reference Framework Convention

We thank the Ad Hoc Committee for the possibility to express our views on the zero draft of the Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, as shared by the Chair of the Ad Hoc Committee.

At this stage we have some specific and concrete suggestions regarding the zero draft of the Terms of Reference on which we will elaborate below, but we will start with some general remarks.

We refer to the agreed common position of the EU and its Member States of 25 April 2024 that was brought as a general statement during the first substantive session in NY for our guiding principles for a UN Framework Convention on international tax cooperation that we also want to see reflected in the Terms of Reference for this Convention.

By leveraging its broad memberships and strengths, the proposed UN Framework Convention on International Tax Cooperation should aim to catalyse global dialogue and create policy synergy.

In recognition of the call for more inclusive and effective international tax cooperation, the convention should aim to gather countries to exchange effective practices on mobilizing domestic resources through both tax policy formulation and the strengthening of enforcement mechanisms. This effort underscores the pivotal role of the UN in supporting UN Member States to mobilize domestic revenues and finance development strategies, aligning closely with the aspirations outlined in General Assembly Resolution 78/230.

We also want to reiterate that the Kingdom of the Netherlands supports any effort to enforce inclusive, effective and sustainable international tax cooperation. We are dedicated to contributing to the work of the Ad Hoc Committee and above all, to ensuring that this important work results in broadly supported and effective outcomes. To achieve this, we recall the request made in Resolution 78/230 to take into consideration ongoing and existing work of other relevant forums. Consistency with ongoing work and consensus achieved in international forums (such as the Inclusive Framework on BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes) should be a guiding principle, aiming to build on these strengths and engage in effective cooperation to ensure a synergistic approach to global tax challenges. The Convention should seek to avoid duplication and fragmentation of work. By doing so, the comfort and commitment to work towards a broadly supported outcome will be solidified.

The specific and concrete suggestions we referred to above, can be distinguished into three types: principled views, practical proposals and drafting suggestions.

Principled views

Paragraphs 7, 8, 9 and 13

In these paragraphs the Terms of Reference refer to “the international tax system”. However, as the ICTD stated in their Report to the Secretary General, there is no such all-encompassing international tax system. There is only a patchwork of domestic rules, bilateral agreements and (very few) multilateral agreements that determine the taxation of cross-border situations. The results of that patchwork on the same fact pattern can vary widely, depending on the states involved. It is therefore incorrect to suggest that a UN Framework Convention can change or establish an all-encompassing international tax system. What the Framework could do, and we will come back on that below, is to give options for Member States to amend in a coordinated way those domestic and bilateral rules.

On the other hand, the zero draft of the Terms of Reference suggests establishing a system of governance for international tax cooperation. We note that there is already a well-established system of governance for international tax cooperation that seems unlikely to be changed. It is generally accepted that states have sovereignty to determine their domestic rules and are equally sovereign to determine which bilateral or multilateral conventions they sign up to. Reference is also made to the notion of tax sovereignty in the report of the UN Secretary-General of July last year. Once signed and ratified, it is evident that states are bound to act in conformity with these agreements and should not override them with domestic measures.

In that light, the Terms of Reference should avoid the suggestion that states can be bound by a majority decision. It should clarify what the aim of the Framework Convention will be in this reality. Will the Framework Convention include (multilateral) agreements to which states in their own sovereignty can agree to, will it be a convention in which states multilaterally only agree to participate, with protocols to which, again, states can sign up to (bilaterally) in their full sovereignty or will it be a set of suggestions for best practices that states can use in their domestic regulation or in bilateral agreements?

Once again reiterating the commitment to ensure that the work of the Ad Hoc Committee results in broadly supported and effective outcomes, we strongly believe that clarity about the foundation and structure of the Convention and its relation to the protocols would offer the crucial opening for an open and constructive conversation within the Ad Hoc Committee and would set the basis for progress based on consensus.

Furthermore, we believe that this basis would be solidified by including the task as laid down in resolution 78/230 to take into consideration ongoing and existing work as a guiding principle in the Terms of Reference.

Paragraph 10

The call for a fair allocation of taxing rights, including equitable taxation of multinational enterprises is subjective as Member States (and stakeholders) have different opinions of what fair and equitable exactly would be.

The notion "effective taxation of HNWI" indicates a very specific commitment and action where we first see the need for a thorough policy analysis of tax systems worldwide before deciding on a course of action. Considering that globalisation, economic integration and technological developments have reduced mobility costs, making individual taxpayers more mobile and traditional tax bases more sensitive to tax avoidance, it could be worthwhile to focus on tools to strengthening national tax systems in combination with a focus on transparency and EoI to obtain information on wealth held abroad.

Paragraph 14

As long as there is no concrete understanding of the foundations and structure of the Framework Convention, its protocols and the significance of early protocols within this framework, we are reluctant to commit to developing (early) protocols on notably contentious issues.

Paragraphs 10, 14 and 20

These paragraphs seem to be contradictory. By including commitments on taxation of multinational enterprises and taxation of the digitalized and globalized economy, existing and ongoing commitments and work seem to be disregarded.

Practical proposals

In paragraph 16 we propose to include that meetings will last no longer than five days and will be held from Monday to Friday. Discussion at these meetings should be based on substantive papers that are distributed at least seven working days before the meeting.

With the objective of a broadly supported and effective convention in mind, we reiterate our suggestion regarding paragraphs 10, 14 and 17 that the Ad Hoc Committee and the Negotiating Committee should prioritize work on substantive elements and protocols on issues where consensus is most likely to be reached. We thereby suggest refraining from setting timelines for developing protocols, as the focus should first be on developing the Convention itself.

We suggest adding "or other instruments" to all references to protocols to give the future negotiating committee flexibility to determine the most effective mechanism to address specific issues.

Drafting suggestions

In paragraph 9: Include a bullet with the wording in the current paragraph 20 (and delete paragraph 20 accordingly).

In paragraph 10:

- Delete "fair allocation of taxing rights, including equitable taxation of multinational enterprises".
- Replace "effective taxation of HNWI" by "strategies for realizing effective taxation of HNWI".
- Add "promoting domestic resource mobilization".

In paragraph 13: Add after "relationship with": "protocols and other instruments provided for by the framework convention, (...)".

In paragraph 14:

- Replace "should" by "could" and replace "to be" by "that could be".
- Delete "taxation of the digitalized and globalized economy".
- Delete "taxation of income derived from cross-border services".
- Add "taxation of income from natural resources and offshore activities".
- Add "the relation between tax treaties and trade- and investment agreements".
- Add "tax measures on environmental and climate challenges; exchange of information for tax purposes, mutual administrative assistance on tax matters; and harmful tax practices."

Delete paragraph 15 and renumber the following paragraphs accordingly.

In paragraph 17: Replace the existing wording with: "The intergovernmental negotiating committee may begin discussing the early protocols described above during the negotiation of the framework convention as soon as the progress on the underlying regulations related to protocols matured enough, with the aim of finishing the negotiation of such protocols within reasonable time after the conclusion of the negotiation of the framework convention, to optimize coordination between the documents".

We would like to reiterate the Kingdom of the Netherlands' appreciation for the work of the Ad Hoc Committee and reassure you of our ongoing commitment to the process developing an effective and useful Convention.