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The Chairman,

Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation,
United Nations Headquarters,
New York,
USA,

Sir,

**Re – Comments on the Bureau’s Zero Draft Terms of Reference
for a United Nations Framework Convention on International Tax Cooperation**

General Comments

1. The African Union (AU), on behalf of our members and allied organizations¹ welcomes the release of the zero draft of the Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation. The AU recognizes the importance of the zero draft in synthesizing members' views towards the final ToR due at the end of the second substantive session of the Ad Hoc Intergovernmental Committee (AHC) held on 29th July to 15th August 2024.

Specific Comments

2. While we commend the draft generally, we supply the following comments -
- a. *Introduction:* We believe that the introduction is necessary for contextualizing the work and for proper understanding of the background of the work. As such, we welcome the inclusion of preamble in the current draft.
 - b. *Preamble:* the preamble ties the thrust of the convention to its originating resolutions. This, we believe would anchor the framework convention to the many laudable initiatives articulated in those resolutions.
 - c. *Objective:* we suggest that paragraph 7(a) should be amended to read “establish the fundamental principles that ensure the full inclusiveness and effectiveness of the international tax cooperation for all parties, including developing countries, in terms of substance and process”.
 - d. *Principles:* with respect to this paragraph, it is suggested that –

- i. The clause:” ... while respecting the rights to privacy and other fundamental human rights be deleted. This clause causes confusion and does not add any value to the paragraph.
- ii. A new clause 3 be inserted thus: “minimize tax evasion and avoidance”
- e. *Substantive elements of the Framework Convention:* parties to the Framework Convention should be at liberty to make commitment on broad themed issues. The current rendition per paragraph 10 seems to have limited issues to which parties could have commitments. We suggest that this be redrafted to make the paragraph open-ended, allowing for opportunities for a broader level of commitment during negotiations.
- f. *Capacity building:* [paragraph 11] we suggest a redraft to read “Recognizing that respect for tax sovereignty implies inclusive and effective participation in international tax cooperation anchored on 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 also supports 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”.
- g. [on paragraph 12] we add that the convention should seek to consolidate or coordinate all capacity building efforts of the United Nations and its agencies under a subsidiary body within the framework. This will ensure the effectiveness and inclusiveness of such an effort.
- h. *Structural elements of the Framework Convention:* we suggest the addition of an advisory body to the structure of the framework. Such a body should have technical supervision of the work of the framework on behalf of the CoP which is necessarily high level and would sparingly meet to give mandates or approve the work done.
- i. *Specific priority areas to be addressed in early protocols:* we call for prioritization of “the taxation of the digital economy” as the early protocol. This is because hope seems to have dimmed for an effective and timely implementation of Pillar 1 Amount A leading countries to start proliferation of rules to tax the digital economy by way of intruding Digital Service Taxes or some form of significant economic presence rules. As such, prioritizing the taxation of digital economy will be a quick win for all parties as it will stop fragmentation of international tax rules in this respect and provide respite for countries unable to tax this sector owing to the ineffectiveness of the existing rules.
- j. In Paragraph 15 The reference to exchange of information for tax purposes should be redrafted to read: “effective exchange of information for tax purposes”
- k. We suggest moving some items from paragraph 14 to paragraph 15.
- l. paragraph 20 of the Zero Draft should be re-drafted to replace the word “should” with “may”. In other words, “throughout its work, the intergovernmental negotiating committee “may” take into consideration the work of other relevant forums”.

Conclusion

3. We believe that this zero draft is reflective of most of the inputs of members during the first substantive session. It is therefore a critical base to start and conclude the assignment of the committee as we go into the final session.