



Written Comments of The International Air Transport Association (IATA) on the Zero Draft Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation

Dear Members of the Ad Hoc Committee,

The International Air Transport Association (IATA) appreciates the opportunity to provide input on the Zero Draft Terms of Reference (ToR) for the United Nations Framework Convention on International Tax Cooperation. As a global trade association representing 330 airlines across 120 countries, which accounts for 83% of total air traffic, IATA is committed to collaborating with the United Nations and other stakeholders to foster comprehensive and effective international tax cooperation while supporting the more sustainable growth of the international aviation industry.

IATA acknowledges the importance of the Ad Hoc Committee's efforts in establishing a broad framework for international tax cooperation. We firmly believe that the effectiveness of this convention and the prevention of unforeseen implications hinge on its alignment and synergy with existing international tax and environmental frameworks. This is particularly crucial for frameworks integral to the international aviation industry, such as those developed by the International Civil Aviation Organization (ICAO), a specialized UN agency dealing with civil aviation matters.

ICAO's Document 8632 outlines international air transport taxation policies, providing a dedicated, fair, transparent, and harmonized framework. Furthermore, ICAO has been actively addressing the environmental impact of international aviation. This is evident in the development and implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) – an ICAO Standards and Recommended Practices (SARPs) – that aims to achieve carbon neutrality in international aviation by 2050. These policies and SARPs, endorsed and adopted by ICAO's Member States, consider the intricacies and specificities of the aviation industry.

Given these considerations, it is of utmost importance that ICAO's work remains unobstructed by overlapping initiatives from other UN agencies. Such overlap could potentially introduce uncertainty, inadvertently impeding the normal performance and development of the air transport industry. Therefore, while the Framework Convention is broad and general in scope, it is essential to ensure that it does not inadvertently encroach upon or conflict with the specialized frameworks that govern sectors like aviation. This will ensure the convention's effectiveness and ability to foster robust international tax cooperation.

In the following sections, we will provide comments on certain aspects of the Zero Draft ToR that are particularly relevant to the international air transport industry:



1. Objectives (Section 7c):

IATA is deeply concerned that the language in Section 7c of the ToR, which calls for establishing an international tax system, exceeds the intended scope of the framework convention as outlined in UN General Assembly Resolutions 78/230, 77/244, and 69/313.

A thorough analysis of these resolutions reveals that while they emphasize the importance of strengthening international tax cooperation and enhancing its inclusivity and effectiveness, they do not explicitly mandate creating a new international tax system. Instead, they focus on increasing the legitimacy, stability, resilience, and fairness of international tax rules through scaled-up cooperation (Resolution 78/230) and the need to strengthen international cooperation on tax matters in a more inclusive intergovernmental forum (Resolution 77/244).

The Addis Ababa Action Agenda (Resolution 69/313) further underscores the importance of enhancing revenue administration through modernized tax systems, improved policies, and more efficient tax collection. However, it stops short of calling for establishing an entirely new international tax system.

Given the absence of a clear mandate in these resolutions, IATA strongly recommends that the objectives in Section 7c be deleted or revised to align with the resolutions' language and intent.

Moreover, IATA considers that establishing a new international tax system could potentially overlap with or conflict with the existing international tax framework for the international air transport industry, as pointed out in the introductory section of this document. International air transport taxation policy, developed through the consensus of ICAO's 193 Member States, considers the industry's unique characteristics and complexities and is essential for economically viable air connectivity.

2. Principles (Sections 8 and 9):

IATA observes that Section 8 of the ToR, which calls for clear guiding principles for the UN Framework Convention on International Tax Cooperation, lacks explicit definitions of these principles. Insights for these guiding principles can be drawn from UN General Assembly Resolutions 78/230, 77/244, and 69/313 (the Addis Ababa Action Agenda), which underscore a universal approach, consideration of diverse national needs and capacities, and a balanced address of economic, social, and environmental aspects. However, Section 9 of the ToR, which embodies elements from these resolutions, could be merged with Section 8 to form the convention's guiding principles.

IATA also advocates for incorporating an additional guiding principle that acknowledges industry-specific international taxation frameworks and policies, which are crucial for sectors like aviation. This guiding principle would prevent the UN Framework Convention from conflicting with air transport-specific taxation policies, avoiding legal uncertainties and potential conflicts of laws.

Article 30(2) of the Vienna Convention on the Law of Treaties (VCLT) states that if a treaty declares it is subject to or not in conflict with an earlier or later treaty, the provisions of the other treaty take precedence.



Applying this principle to the UN Framework Convention on International Tax Cooperation would mean that if the convention explicitly acknowledges its alignment with or non-conflict with existing industry-specific international taxation frameworks, the provisions of these existing frameworks would take precedence.

This approach would demonstrate the UN's commitment to ensuring that its new convention aligns with and respects existing international agreements, frameworks, and policies. It would also align with the spirit of cooperation among international tax institutions, as emphasized in the Addis Ababa Action Agenda (Paragraph 28). This would contribute to a more harmonized and coherent approach to international tax cooperation, taking into account the specific needs and challenges of different industries.

3. Substantive Elements (Section 10):

a. Fair Allocation of Taxing Rights and Equitable Taxation of Multinational Enterprise.

IATA is concerned that the inclusion of provisions related to the fair allocation of taxing rights and equitable taxation of multinational enterprises in the substantive elements of the proposed UN Framework Convention on International Tax Cooperation may not align with the core objectives and principles outlined in UN General Assembly Resolutions 78/230, 77/244, and 69/313 (the Addis Ababa Action Agenda).

The existing international tax framework, consisting of Bilateral Tax Treaties to avoid double taxation and sector-specific instruments such as Bilateral Air Services Agreements, has been carefully developed to ensure a balanced and equitable allocation of taxing rights. These agreements consider different industries' unique characteristics and requirements, including the aviation sector.

Introducing new elements related to the allocation of taxing rights in the ToR for the UN Framework Convention risks creating inconsistencies and conflicts with the existing international tax frameworks. This could lead to legal uncertainties, increased compliance burdens, and potential double or multiple taxation for multinational enterprises, ultimately undermining the goals of international tax cooperation and the fair allocation of taxing rights.

IATA respectfully requests that the Ad Hoc Committee remove the aspects related to the allocation of taxing rights in the substantive elements of the proposed ToR for the UN Framework Convention. Instead, the convention should complement and reinforce the existing international tax framework, promote consistency, and avoid creating parallel rules.

b. Ensuring Tax Measures Contribute to Addressing Environmental Challenges (Section 10):

IATA recognizes the importance of addressing environmental challenges; however, we are concerned that including tax measures in ToR of the proposed UN Convention may not be appropriate or effective.



As previously explained, the international aviation industry has adopted a clear roadmap to address the environmental challenges. This roadmap, agreed upon by 193 ICAO's Member States, aims to achieve carbon neutrality by 2050. **The introduction of tax measures to address environmental challenges through the UN Framework Convention risks creating a patchwork of overlapping and potentially conflicting requirements for the aviation industry. This could undermine the effectiveness and legitimacy of ICAO's efforts to address the sector's environmental impact and lead to involuntary consequences, such as market distortions and increased costs for airlines and consumers.**

IATA strongly recommends that the Ad Hoc Committee eliminate the inclusion of tax measures for addressing environmental challenges in the substantive elements of the ToR for the UN Framework Convention. Instead, the convention should recognize and support the ongoing efforts of sector-specific organizations like ICAO in tackling environmental issues, ensuring a harmonized and consistent approach to environmental stewardship in international civil aviation.

4. Data Collection and Analysis (Section 13):

As a global industry subject to a wide range of data protection and privacy laws, IATA stresses the importance of ensuring that data collection and analysis provisions in the framework convention respect and align with existing data privacy State practices. The convention should strike a balance between promoting transparency and accountability in international tax cooperation and safeguarding the rights of individuals and businesses concerning data privacy. This can be achieved by:

1. Incorporating data protection principles into the convention's provisions.
2. Ensuring data collection and sharing requirements are proportionate and aligned with the convention's objectives.
3. Providing clear guidance on safeguards to protect personal data and maintain confidentiality.

4. Early Protocols and Future Protocols (Sections 14 and 15):

In international law, protocols are typically used to amend, supplement, or clarify the provisions of a main treaty. As formal legal instruments, protocols carry the same legal force as the parent treaty itself. However, the adoption of a protocol requires the parties' consent, following the same procedure as the adoption of the main treaty.

IATA strongly opposes the inclusion of taxation of income derived from cross-border services, taxation in a digitalized and globalized economy, and environmental tax measures as subjects for early and future protocols under the proposed UN Framework Convention on International Tax Cooperation.

Discussing potential protocols before the convention's content has been thoroughly negotiated and agreed upon by the parties is premature and inappropriate. Protocols should be developed following a specific need and only after a solid foundation of consensus on the main text of the convention has been established. Proposing the development of early protocols without a clear understanding of the convention's final terms risks creating a fragmented and imbalanced legal framework.



Moreover, the international legal landscape already includes a complex network of bilateral tax treaties that address issues such as the taxation of cross-border services and the allocation of taxing rights in a digitalized economy. Introducing protocols on these matters without considering the existing legal framework could lead to inconsistencies, legal uncertainties, and potential conflicts between the convention and current international tax agreements.

Environmental tax measures are a recurrent topic in the ToR. As stated above, they could create duplicative or conflicting requirements, placing an undue burden on the aviation sector and undermining the effectiveness of existing initiatives.

Finally, IATA urges the Ad Hoc Committee to refrain from including provisions related to early and future protocols in the UN Framework Convention on International Tax Cooperation. Any future consideration of protocols should be based on a thorough assessment of their necessity, complementarity with existing legal frameworks, and potential impact on specific sectors, such as international aviation.

IATA urges the Ad Hoc Committee to carefully consider the concerns raised in this submission and revise the Zero Draft ToR accordingly. The proposed UN Framework Convention on International Tax Cooperation must align with and complement existing industry-specific taxation frameworks. Failure to ensure this alignment risks creating a fragmented, inconsistent, and burdensome international tax system that undermines the sustainable growth of the air transport industry and hinders effective tax cooperation.

By incorporating the recommended changes and focusing on consistency, complementarity, and respect for existing frameworks, the UN Framework Convention can serve as a valuable tool for enhancing international tax cooperation while supporting the vital role of the aviation industry in connecting people, businesses, and economies worldwide. IATA stands ready to engage constructively with the Ad Hoc Committee and other stakeholders to ensure that the final convention is well-crafted, effective, and responsive to the needs of all stakeholders.

We would welcome the opportunity to discuss this topic upon request.

Kind regards,

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