

Comments on the Bureau's Proposal for Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

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ITI welcomes the opportunity to provide feedback on the Bureau's Proposal for Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (zero draft).¹

General observations

Tax policy drives economic growth, trade, and investment. The zero draft focuses on the role of tax policy as revenue collection for governments, but it does not address the role of tax policy in driving economic growth and mobilizing productive investments. ITI urges Member States to consider how tax policy can act as a facilitator to support achieving sustainable development goals. Revenue collection does not happen in a vacuum; the structure and rates of tax policy changes may have significant effects on cross-border trade and investment, job creation and retention, research and development, and other economic and social objectives. Thus, negotiators should ensure that the development of tax policy takes into consideration broader economic effects and bolster such consideration by conducting assessments with empirical data, and by seeking out business sector input on a regular and sustained basis.

Negotiators should clearly define scope to ensure any negotiations and outcomes in the UN would not be duplicative of nor conflicting with negotiations and outcomes in the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework (IF). The successful administration of cross-border tax policy requires governments to collaborate and co-ordinate on a single set of rules, as the IF has been doing for several years. To have a separate, parallel set of rules governing cross-border taxation through the United Nations (UN) would generate greater fragmentation and contribute to the resumption of tax and trade disputes.

Zero draft negotiations should prioritize topics for which there is already some level of international consensus. Attending, monitoring, preparing for, and participating in negotiations in the UN will require dedicated resources by all stakeholders. Focusing or prioritizing topics for which there is already some international consensus (e.g., best practices for designing pro-growth and sustainable tax policy, capacity building and technical exchanges, etc.) will facilitate progress and support productive policy discussion.

¹ The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents and provides policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

Decision-making related to the Framework Convention should proceed on a consensus basis. The first substantive session featured robust discussion about decision-making related to the development of the Ad Hoc Committee’s work. Consensus decision-making drives legitimacy and durability, both of which foster predictability, stability, and certainty in the international tax system. It is essential that governments proceed on a consensus basis and develop policies with broad agreement across all their major trading partners to avoid double or multiple taxation.

Meaningful and comprehensive stakeholder engagement makes for better outcomes. ITI welcomes the opportunity to participate in this comment period and encourages the Ad Hoc Committee to pursue more formal and informal stakeholder engagement, which will help to produce outcomes more likely to meet the Framework Convention’s objectives and to yield more sustainable outcomes. The perspectives of practitioners are critical to making administrable tax policy and to reduce disputes that hamper taxpayers and tax administrations alike. To that effect, ITI underscores the importance of providing longer comment periods in the future, preferably at least 30 days, so that we have time to appropriately digest and respond to any proposals. ITI also suggests establishing an official channel for requesting and receiving business input, to increase the likelihood of developing policies that are administrable and do not deter economic growth.

Principles

ITI recommends amending the third bullet under paragraph 9 to include the underlined text: “provide for rules that are as simple and easy to administer as the subject matter allows and as is economically reasonable for fostering growth and investment.” Administrability and simplicity are worthy objectives, but these values should not come at the expense of broader economic objectives. For example, imposing tax on income is inherently more complicated than imposing tax on revenue, but it yields better economic results by taking into consideration the expenses a company incurs to earn revenue (e.g., investments in operations, payroll, research and development, inputs, etc.). Additionally, investments in operations, employees, and research and development can have wide-ranging effects on efforts to achieve government objectives, whether providing better employment opportunities or developing and adopting the next generation of technologies to support climate adaptation and mitigation.

ITI recommends that the Bureau add a principle encouraging Member States to design tax policies in such a way to avoid double or multiple taxation and to coordinate multilateral negotiations over taxing rights. Another element of sound tax policy that may generate complexity but is vital to a well-functioning international tax system is the elimination of double or multiple taxation. Any system which does not result in a clear agreement as to which jurisdiction has taxing rights – and which jurisdictions must have mechanisms to avoid double taxation through credits or exemptions – is a system that will simply escalate into decreased economic investment, slowed growth, and stunted technological development. Faced with excessive gross revenue taxes or double taxation, taxpayers may have to increase prices or exit the market altogether if it is not possible to recoup costs, both of which are outcomes that come at the expense of consumers and businesses that benefit from productivity-enhancing technologies. The absence of coordination may also contribute to increased trade tensions.

ITI encourages the Bureau to consider including language in the principles to prioritize the taxation of income rather than revenue, due to the reasons listed above and the potential for distorted economic outcomes. To illustrate how gross receipts taxes compare to corporate income taxes, a gross receipt tax of 3% applied to a company with a 10% profit rate equates to a 30% effective

corporate income tax rate, with limited to no availability for credits. A gross receipts tax of 3% applied to a company with a 2% profit rate equals a 150% effective corporate income tax rate. This gross receipts tax is applied in addition to corporate income taxes paid by the company. The double taxation and subsequent effective corporate income tax rate are especially impactful to companies with lower profit margins and companies with losses.

The zero draft references transparency with respect to the negotiations in the “objectives” section and with respect to taxpayers in the “principles” section. Transparency in negotiations should include how decisions are made within processes, so that outcomes will be met with greater acceptance and make it more likely to achieve alignment. With respect to taxpayers, many governments have already committed through the OECD Base Erosion and Profit Shifting (BEPS) Action 13 to provide for the exchange of information on a confidential basis, in large part to mitigate risk of misinterpretation and misuse arising from public disclosure. The tax information published by companies in their public stock exchange filings and statutory accounts provides an appropriate level of public detail regarding a company’s tax affairs.

ITI notes that the zero draft includes a principle on “[being] sufficiently flexible, resilient and agile to ensure equitable results as **technology and business models and the international tax cooperation landscapes evolve**” (emphasis ITI). While technology undoubtedly will continue to evolve, the advancement of more streamlined and cost-effective mechanisms for delivering goods and services (i.e., the mode of delivery) should not in itself justify a change in the tax treatment of a transaction or activity. ITI also cautions the Ad Hoc Committee against attempting to ring-fence the digital economy for taxation purposes, as it is clear that the entire economy is digitalizing.

Substantive elements of the Framework Convention

ITI suggests alternative wording to the placeholder commitment of “fair allocation of taxing rights, including equitable taxation of multinational enterprises.” As mentioned above, ITI encourages the Bureau to refrain from duplicative or conflicting negotiations or outcomes with the IF and to consider including language in the principles to prioritize the taxation of income rather than revenue. Following these recommendations, ITI suggests that any preliminary commitments for the Framework Convention be something to the effect of either: “Supporting multilateral efforts to promote allocation of minimum income taxing rights of global enterprises” or “Allocation of **income** taxing rights, including equitable **income** taxation of multinational enterprises” (emphasis added).

Structural elements of the Framework Convention

ITI understands that a future Committee will build out the structural elements of the Framework Convention but puts forward some initial thoughts for consideration.

- **Definitions:** To the extent practical, definitions in the Framework Convention should draw from existing, widely accepted definitions and build on long-standing international tax norms to ease the compliance burden for taxpayers and tax administrations and facilitate interoperability with existing rules. If Member States decide to develop a definition for “illicit financial flows,” the definition should take into account the difference between tax avoidance – which is legal – and tax evasion, which is not.
- **Data collection and analysis:** The Framework Convention should limit data collection to what is explicitly required for compliance and secure a commitment from Member States against

using data for “fishing expeditions” by providing tangible guardrails for sharing data within the relevant domestic authority. There should also be strict rules to address breaches of confidentiality.

- Dispute settlement mechanisms: Any reference to dispute settlement mechanisms should be expanded to include dispute prevention and dispute settlement mechanisms. Incorporating dispute prevention will ensure certainty and predictability in outcomes arising from the Framework Convention.

Specific priority areas to be addressed in early protocols

ITI notes with concern the number and breadth of topics identified for early protocols to be developed simultaneously with the negotiation of the Framework Convention. Even with the proposed six-month extension for early protocols beyond the negotiation of the Framework Convention, the fact remains that the simultaneous negotiation will severely strain resources and expertise that would otherwise go to the negotiation of the Framework Convention.

If the Committee pursues simultaneous (or slightly staggered) development of early protocols, then the Committee should prioritize a topic or topics that are not already the subject of existing international tax negotiations. Taking this approach would reduce the likelihood of producing outcomes that would generate greater fragmentation in the international tax system and strengthen capacity building and norms for tax cooperation in the UN.

Approaches and time frame for negotiation

The zero draft proposes that a Member State-led negotiating committee develops the Framework Convention “in accordance with established practice.” The coordination of taxing rights requires consensus decision-making. Absent consensus by Member States, any outcomes risk generating greater fragmentation in the international tax system and significant double or multiple taxation outcomes. Decision-making based on consensus also fosters greater legitimacy.

As the Ad Hoc Committee considers the approach and time frame for negotiation, ITI reiterates the importance of pursuing comprehensive stakeholder engagement, including an established channel for business input, and incorporating technical expertise on an ongoing basis. For example, the UN Tax Committee enlists practitioners to populate subcommittees as a means of providing technical expertise and economic analysis to support the government-nominated individuals who serve on the UN Tax Committee. The IF benefits from the contributions of its working parties, which convene government officials within tax and finance functions to discuss specific topics. ITI strongly supports the creation of an established means for business to provide input on both technical and practical implications of various proposals; it is important to take into consideration the impact of provisions on foreign investment, economic growth, and job creation. ITI also encourages developing analysis based on empirical data that includes estimated impacts on competitiveness and trade and investment flows.

ITI welcomes the zero draft’s directing the negotiating committee to take into consideration the work of other relevant fora. Giving due consideration to other relevant fora will help to protect against fragmentation and its ill effects for taxpayers and tax administrations alike.
