



**CSAT**

Centre for Studies  
in African Taxation



# **Comments on the UN Ad Hoc Committee Bureau's Proposal for the Zero Draft Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation**

**IBFD Centre for Studies in African Taxation**

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## **Comments of the International Bureau of Fiscal Documentation (IBFD), Centre for Studies in African Taxation (CSAT) on the UN Ad Hoc Committee Bureau's Proposal for the Zero Draft Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation.**

### **1. Introduction**

The IBFD Centre for Studies in African Taxation (CSAT) is a think-tank of the IBFD Knowledge Centre, dedicated to the study and development of sound tax policies for Africa, as well as to enhancing tax expertise within Africa.

We thank the Bureau for the effort and resources put into drafting the proposed Terms of Reference for a UN Framework Convention, and for the commitment to finalise the ToR ahead of the seventy-ninth Session of the UN General Assembly. We welcome the opportunity to provide input into this process.

We begin with a general comment on the Draft, followed by comments on specific elements of the Draft.

### **2. General comment**

**Inclusion of a provision on decision-making as part of the core outline of the ToR:** Given the emphasis placed by various parties (most notably, developing countries) on the decision-making process throughout both current and future proceedings, we propose that this issue be addressed expressly under the structural elements of the ToR. This would reflect its weight in relation to the objectives of the Convention.

The decision-making process is a critical element of the UN Framework Convention, considering that this issue is one of the prominent and recurring criticisms of the current norm-setting framework. The decision-making process is also closely linked to

the transparency objective of the UN Framework Convention. It is therefore essential that this be clearly addressed in the ToR.

For the envisioned framework under the UN to be broadly accepted as genuinely embodying inclusivity (and therefore engendering collective ownership), the decision-making process must be seen as fair. This begins with due weight being given to this matter at all relevant stages.

### **3. Comments on Specific Elements of the Draft ToR**

#### *3.1. Objectives*

**Clarity of objectives and clear definitions of terms:** There should be a shared and common understanding of the objectives and terms used. Therefore, the terms and concepts set out in the Draft should be explained in clearer terms, and / or accompanied by detailed definitions.

These include the terms: "full inclusiveness", "effectiveness", "tax sovereignty", "fair", "transparent", "equitable", "effective international tax system", "legitimacy", "fairness of international tax rules" and "countries in special situations".

Such terms lend themselves to subjective interpretation. Clarity is therefore crucial.

#### *3.2. Principles*

**The need for a clear link between the guiding principles and the other elements of the Convention:** For the guiding principles to be effective, they should be linked to clear objectives, themselves underpinned by robust processes and procedures. It is therefore proposed that there be a clearer link between the guiding principles and the related objectives.

**Fairness:** The Draft ToR addresses points of inclusivity, simplicity of administration, and fairness, mainly from the standpoint of governments, although with some reference to the situation of taxpayers. The Draft ToR rightly recognises the

importance of certainty, for both taxpayers and governments. We would mention also the need to ensure ease of compliance for taxpayers.

### 3.3. Capacity Building

**Achieving an inclusive agenda-setting process:** A recent IBFD report (July 2023)<sup>1</sup> analysed the level of global adoption of the OECD BEPS recommendations. Among other things, the IBFD report revealed that, while the BEPS Project led to legislative changes globally, among both developed and developing members of the OECD Inclusive Framework, there was, in many cases, a slow response by developing countries. This is due mainly to capacity and resource limitations. Crucially, the report also noted the scant attention paid by the BEPS Project to pressing issues of concern for most developing countries. It is therefore clear that there is a lot riding on the current (and widely stated) need for an inclusive and effective agenda-setting process.

It is therefore commendable that the Draft ToR makes provision for the support of all countries *“to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-setting...”*.

The agenda-setting process should prioritize key areas of concern for all jurisdictions, ensuring that mere participation of developing countries in the process is not the only form of support being provided to them. There should therefore be an opportunity for countries, directly or through country groupings, to present their priority concerns for placement on the agenda.

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<sup>1</sup> This report was prepared at the request of the UN Department of Economic and Social Affairs, and provided background research for the *Report of the Secretary-General on the Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*.

### *3.4. Specific Priority Areas to be Addressed in Early Protocols*

**Clarity, certainty and flexibility for priority areas:** The Draft ToR specifies priority areas that should be developed simultaneously with the negotiation of the Framework Convention. We propose that the main tax issues to be addressed (in relation to each priority area) be identified and clearly spelt out in the ToR . This will provide better scoping for the work to be carried out during the negotiation stage.

Due to the ever-evolving international tax landscape, it is proposed that Clause 14 be made flexible enough to accommodate any unexpected developments that may arise during the preparation of the UN Framework Convention (The unforeseen COVID-19 pandemic and its impact on the tax world, including significant and unanticipated changes to the tax policy and legislation landscape, all serve to buttress the above point.).

We are in accord with the approach taken regarding the additional topics in Clause 15.

### *3.5. Approaches and Timeframe for Negotiation*

**A truly inclusive process must include all relevant stakeholders:** To ensure a truly fair and inclusive system, a meaningful consultation process should be in place. This should involve all relevant stakeholders, from every part of the tax spectrum. We commend the efforts made so far in this regard, and look forward to further consultation as matters proceed.