

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

Ireland would like to thank the Chair and Bureau of the Ad Hoc Committee for the opportunity to provide written comments on the zero draft Terms of Reference (“ToR”) for a United Nations Framework Convention on International Tax Cooperation (“Framework Convention”). Ireland is a strong proponent of multilateralism and we recognise the important role the UN has to play in supporting and enhancing international tax co-operation. We are committed participants in these discussions and look forward to delivering a ToR in line with the UN Secretary General’s Report *Promotion of inclusive and effective international tax cooperation at the United Nations*.

Ongoing International Tax Reforms

Our comments are based on the desire to promote an efficient and effective process at the UN level in the area of international tax cooperation that will help us to promote stability and reliability within the international tax architecture. In progressing the negotiations on the Framework Convention at the UN, as we have stated previously, we believe that it will be critical to ensure that the discussions and the associated work on the issues are as complementary and co-ordinated as possible with the on-going work at other international fora, rather than duplicating or undermining it, or inadvertently creating new issues and/or mismatches. The OECD Inclusive Framework on BEPS has made substantial progress in recent years to tackle aggressive tax planning and reform the international tax system. The OECD Inclusive Framework’s work on addressing the tax challenges brought about by the digitalisation of the economy is now in its final stages and should be allowed to come to fruition.

Sovereignty and Decision Making

Tax is a sovereign matter, something the Secretary General’s Report and the draft ToR recognise, and in this vein, decision making and voting processes must be via consensus and unanimity, as is the case in other international tax fora, to ensure that tax sovereignty is respected. Consensus based decision making should be required in the negotiation and adoption of the text of the Framework Convention and its protocols, as well as for the work of the Ad Hoc Committee, with the objective of achieving a generally accepted result.

Substantive Elements of the Framework Convention and Commitments

We do not believe the topics for commitments mentioned in the draft ToR accurately reflect the views expressed by all Member States during the Ad Hoc Committee’s first substantive session in April and May this year. We caution against a commitment on fair allocation of taxing rights, including equitable taxation of multinational enterprises given the ongoing

critical negotiations at the OECD/Inclusive Framework and the existing commitments made by many participants in this regard. We believe the commitments should be high level and complementary to already existing commitments. Therefore, we would suggest pursuing commitments around domestic resource mobilisation, capacity building, and fostering tax compliance at this time.

We understand that the ultimate list of commitments that should be included in the ToR should be subject to further discussions in the negotiating committee and should not preempt the outcome of future discussions in that forum. This point should be made clearer in the ToR.

Early protocols

To deliver on the Secretary General's report, we need to be mindful of the instruction to only negotiate early protocols "if there is sufficient agreement on certain action items some of these protocols could be negotiated at the same time as the Framework Convention".

We do not believe that the draft list of topics for early protocols, as set out in para 14 of the zero draft ToR, currently meets this test. From participation in the first substantive discussion we believe that significant concerns have been raised by many participants in relation to many of the areas listed. A number of these issues are subject to existing commitments in other international fora and so pushing for these areas to be the subject of early protocols potentially undermines the credibility of the Framework Convention and, in our view, is not aligned with the Secretary General's Report.

We strongly prefer that only a limited number of early protocols be developed after the negotiations of the Framework Convention are concluded. Therefore, we propose the following amendment to the draft ToR: "Early protocols on a small number of specific priority areas could be developed after the negotiation of the framework convention."

Further, negotiating early protocols, alongside the Framework Convention, risks placing excessive demands on Member States' resources. To avoid such a situation, we recommend that the negotiation of early protocols be completed within a reasonable timeframe after negotiation of the Framework Convention concludes. Early protocols on tax-related illicit financial flows and prevention and resolution of tax disputes, once clearly defined, are logical starting points as there is sufficient agreement among all Member States to take action here.

Resources to support the work of the negotiating body

The work of the negotiating committee should be based on detailed research and thorough analysis to enable the committee to work on issues in a targeted and efficient way. Further clarity is needed in relation to the technical resources available to support this work.

We would like to see online meetings catered for during discussions of the negotiating committee. Such access would facilitate better participation from the most relevant experts across the globe, reduce meeting costs for all Member States, and ensure a greater level of participation.

Meaning of Certain Term and Concepts

There is a need to clearly define certain concepts in the ToR for the benefit of all participants. Common understanding of terms such as “fair allocation of taxing rights”, “transparency and exchange of information”, and “tax-related illicit financial flows” is critical to ensure informed negotiation of these aspects of the ToR. Guiding notes on these topics should be prepared for the second session of the Committee.

Ireland would like to wish the Chair and Bureau Members of the Ad Hoc committee continued success in the challenging task ahead and remain committed to constructively contributing to this work.