



PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
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Comments from Liechtenstein on the Zero Draft Terms of Reference for a UN Framework Convention on International Tax Cooperation

Liechtenstein greatly appreciates the opportunity to provide comments on the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. We recognize the significant effort that underlies the development of this draft, which aims to enhance global tax cooperation, and are honored to constructively contribute to this important project.

A global inclusive framework on tax matters recognizing tax sovereignty needs consensus-based decision making

We acknowledge and regret that achieving a consensus among all Bureau members on the current proposal was not possible. In the light of the declared objective of this Framework Convention to establish an inclusive and comprehensive global framework for tax cooperation, not achieving unanimity at this early stage seems contradictory, also with regards to the criticism of the lack of inclusiveness in existing international frameworks. Hence, we would like to emphasize the importance of consensus-based decisions when developing the Framework Convention. Ensuring that decisions are made with the broadest possible agreement is crucial for the long-term success and credibility of a framework convention and for securing wide acceptance among the Member States. Also, another fundamental goal of the Framework Convention relates to tax sovereignty. Without consensus-based decisions it makes it highly unlikely to achieve this goal.

No inclusivity or credible long-term solutions without a realistic timeline

Regarding the proposed timeline, we would like to point out that for a truly inclusive process, it is also essential to allocate sufficient time to substantially review and discuss the shared documents and come up with compromise solutions – especially given the complexity and impact of the envisaged Framework Convention. In our opinion, the review and feedback period of two weeks is not sufficient to conduct a comprehensive analysis and provide meaningful input on the current draft proposal. While we broadly welcome an efficient negotiation process, we also

question if two years – depending on the number and length of sessions – will suffice to agree on both a Framework Convention and early protocols.

In addition to these general observations, we would like to share the following preliminary considerations:

Substantive elements of the Framework Convention

- Para. 10 mentions that "*the framework convention should include commitments on: fair allocation of taxing rights*". While we agree with the underlying objective, we would like to refer to existing solutions regarding minimum taxation of large MNE groups as well as the work regarding Amount A and B of Pillar 1 which is more or less finalized. Therefore, we suggest to refer to this work that has already been done on global level by adding: "by building on the measures developed under Pillar One and Two of the OECD/G20".
- Furthermore, para. 10 refers to commitments that "*should*" be included in the Framework Convention. We maintain the view that it would be more suitable to replace the term "should" by "could" to provide more flexibility to the negotiating parties.

Capacity building

- Paras. 11 and 12 refer to issues regarding "*Capacity Building*". Considering the overall objective of the process, we would like to emphasize that there are several topics mentioned in the Zero Draft ToR, which seem to be addressed already by existing legal frameworks. Therefore, we take the view that it is crucial to consider and refer to already established processes to mitigate resource constraints. The current scarcity of resources and capacities requires the efficient use of available mechanisms. This would also pose a more sustainable and effective approach to international tax cooperation, avoiding that efforts are duplicated.

Structural elements of the Framework Convention

- Para. 13 mentions that the Framework Convention should include substantive and procedural elements on the relationship of the Framework Convention to domestic law. We would like to stress in this regard that this issue gives rise to significant challenges. Given the diverse constitutional, legal and political frameworks of individual countries, integrating such specific provisions risks the infringement of national sovereignty due to harmonization. The fact that each country's legal structure is unique, renders it not viable to include a one-size-fits-all provision within the Framework Convention.

Specific priority areas to be addressed in early protocols

- Para. 14 (along with other sections of the Zero Draft ToR) refers to the development of early protocols. In general, developing early protocols simultaneously with the negotiation of the Framework Convention appears to be very ambitious and challenging in practice. Given the complexities and consensus needed in this regard, it might be more practical to prioritize a sequential development, starting with the most pressing issues, where broad consensus can be more readily achieved. Thus, the number of early protocols (if there will be any) should be kept to a minimum. Moreover, some of the topics that are listed under para. 14 and should be subject to early protocols are also mentioned under para. 10 as substantive elements of the Framework Convention. This overlap makes the relationship between the Framework Convention itself and early protocols unclear.
- With regard to the specific priority issues mentioned in para. 14 *inter alia* list the "*taxation of the digitalized and globalized economy*": Given the fact that comprehensive work has already been done on this matter by the OECD/G20 Inclusive Framework on BEPS, it is not clear why it needs to be further addressed in an early protocol. In any case, the paragraph should clarify the specific aspects to be covered under this item to ensure focus and effectiveness. Moreover, this issue should in any case be aligned with the OECD's work on Pillar One and Pillar Two to avoid overlapping and to harmonize efforts.
- Furthermore, the bullet point "*taxation of income derived from cross-border services*" in para. 14 should be deleted. Given the fact that the taxation of cross-border services is handled very differently in the existing model conventions, this is certainly a very controversial issue that probably does not find broad consensus at an early stage.
- Regarding para. 15, it is unclear what additional value this paragraph brings to the overall document. While we recognize that the topics listed are rather indicative, it may be better to integrate the most relevant and least critical issues into para. 14 and delete para. 15. This approach could provide greater flexibility to adapt to future developments and shifts in the international tax landscape, ensuring that the framework remains relevant and responsive to evolving needs.
- Notwithstanding the above, para. 15 lists "*exchange of information for tax purposes*" among the topics that might be subject to future protocols. In this regard, we would like to stress the importance of exchange of information in order to fight tax avoidance and evasion. However, we also like to highlight that several international standards on exchange of information already do exist and have been widely implemented across various countries and jurisdictions, accompanied by comprehensive peer review processes. In this regard the standards on exchange of information on request are well-proven and have been in existence for almost 15 years now. The AEOI standard has already been revised and will be added by the future reporting under the CARF. Regarding MNE groups next to CbCR that has been implemented by many jurisdictions already, additionally, several jurisdictions are in the process of introducing public country-by-country reporting. Furthermore, upholding confidentiality within the framework of exchange of information is crucial, particularly to protect taxpayer rights. Given the limited resources and capacities of countries that have not yet introduced comprehensive EOI infrastructure, we acknowledge that not all countries can participate equally in this process. Therefore, it might be more appropriate to address this issue in the broader context of domestic resource mobilization.

In any case, it is essential to undertake a thorough analysis to identify actual gaps and required measures in the framework of exchange of information. However, to our knowledge such an analysis has not yet been conducted.

Approaches and time frame for negotiation

- Para. 17 mentions that the negotiation of early protocols should be completed within six months after the conclusion of the negotiation of the Framework Convention. While we acknowledge that the proposed timeline could enhance coordination between the documents, we are of the view that – as previously noted – the simultaneous negotiation of early protocols and the Framework Convention is not feasible due to the complexity therein and resource and capacity constraints. Moreover, considering the unknown number and complexity of these protocols, this pre-set and relatively short timeline does not appear suitable. As mentioned above, for a truly inclusive process, it is also essential to allocate sufficient time to substantially review and discuss the shared documents and proposals.