

To the UN Ad Hoc Committee Bureau
Sent by email to: ahc-tax@un.org

21 June 2024

Comments from Mouvement des Entreprises de France (MEDEF) on the Zero-draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Dear Chair and Members of the Ad Hoc Committee,

We appreciate 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*” (referred to as the “Zero-draft”). The Zero-draft outlines the fundamental parameters and mechanisms for a United Nations (UN) Framework Convention on International Tax Cooperation. We offer hereafter high-level observations as well as some specific comments, and remain fully available for more detailed input if needed.

Mouvement des entreprises de France (MEDEF) is the largest representative business organisation in France, encompassing 173 000 member companies, 122 territorial organisations in continental France and in the overseas departments, 77 professional federations bringing together all business sectors (industry, services, construction, trade, etc.) and 14 associated organisations and partners. These represent 10.2 million employees (i.e. more than one-third of all French employees).

International taxation is one important area of focus for MEDEF as we promote economic growth, free trade and direct investment, global playing field and fair competition. Eliminating double taxation and streamlining administrative processes are among our top-priorities. We are interested in dialoguing constructively with the UN in their endeavour to develop fiscal and trade policies that promote investment aligned with the Sustainable Development Goals (SDGs).

We fully agree with the contribution submitted by the International Chamber of Commerce (ICC) and would like to add or underscore some high-level observations on key issues regarding the content and structure of the “Zero-draft”. We also make some specific comments on its drafting.

Yours sincerely,

MEDEF Tax Affairs

1. Our observations on certain key issues

As a preliminary remark, we recognize the importance of the TOR as they will set the framework and direction for future work. While we note that the TOR would “*provide guidance to the negotiation of the framework convention without unduly limiting flexibility*”, we believe they should also be sufficiently precise so as to set a well-defined framework that will allow work to be well focused.

i. The need for a clear, open and robust negotiation framework that includes the voice of business

Given the topic’s significance, defining a clear negotiation framework is crucial. We respectfully recommend that the TOR provide more precise guidance on methodological aspects such as: topic identification, work processes, decision-making rules, structured dialogue, deadlines, timing of discussions, and the role of the business sector (as one of the main affected party).

Inclusiveness appears to be at the heart of the new Ad Hoc Committee’s work. In our view, this should imply that taxpayers and in particular the business community should be fully involved in this process as they will be the ones primarily impacted by any change.

We believe that public consultations and discussions with the business community are crucial for assessing the real-world effects of a new policy. Businesses should be provided with a platform to express their views, provide insights on practical situations, and offer their expertise on complex subjects. Businesses can provide detailed explanations and shed light on complex flows and value chains, and can also provide input on the technical and practical feasibility of proposed solutions for tax administrations and taxpayers.

Taking this into consideration, we would respectfully recommend considering the setting up an institutionalised group representing the views of business, which may work alongside the Ad Hoc Committee.

ii. Broad Consensus is needed for stability of the rules and smooth implementation

We believe that the stability of fiscal policies and the successful adoption and implementation of any new international tax rules would depend on broad acceptance. Experience shows that fragmentation, tax instability, and double taxation risks arise when decisions lack consensus and coordination.

Therefore, we would like to emphasize on the need for a decision-making process which is based on wide consensus and not simply at majority vote.

iii. Tax Certainty

Paragraph 9 rightly emphasizes certainty and we are grateful that this is recognised as a principle. A stable and predictable tax environment encourages investment and economic growth. Prioritizing tax certainty contributes to a fair and efficient international tax system. Businesses can confidently plan activities when tax rules are unambiguous and legislative changes are foreseeable, especially for cross-border operations.

iv. Simple rules and no double taxation

Complexity and uncertainty arise from fragmented tax frameworks, discouraging cross-border investments and growth. Simple and workable tax rules are key for any international tax system, and benefit both taxpayers and tax administrations. Clear rules should prevent double taxation, ensuring that profits are taxed only once.

v. A call for a coherent and coordinated international tax system

Businesses which operate in a globalized environment have to struggle through complex sets of tax laws across different jurisdictions. Businesses are already engaging significant human and financial resources to comply with current (or upcoming) complex tax regulations, such as the global minimum tax.

We are extremely concerned about the risk of developing parallel international tax frameworks which may be largely overlapping. This would not only create instability, fragmentation and uncertainty for taxpayers but would also place an immense burden on businesses. Multiple challenges may arise from contradictory rules. Business therefore respectfully commends to avoid duplicating efforts and conflicting approaches to common issues.

Mutualising efforts and building on work that has already been carried out in various international organisations should be the preferred approach in order to achieve a truly coordinated international tax system.

vi. The need for an adapted negotiation timeframe and precise methodology

Any major change in international tax policy has the potential to significantly disrupt business activities, profits and therefore growth and tax revenues for tax administrations.

It is crucial that any new tax policy be deeply thought through. In particular, any proposal should be supported by a thorough economic impact analysis that details the issue at stake and evaluates the fiscal and economic impacts. Sufficient time should be allocated to do so before engaging in discussions. Discussions should allow participation of businesses that will be the ones required to comply.

The timeframe should not be rushed as business needs sufficient time to adapt (in particular, any change to an IT system of a tax administration or of a taxpayer may require a one to two-year timeframe starting when the final rules are adopted).

We believe that negotiations at the UN should follow a logical sequencing so as to ensure coherence: Early Protocols should be developed once the Multilateral convention is established and adopted, as it will serve as an overarching framework. The timeframe for adopting such protocols should be realistic.

vii. Taking into account the total tax contribution of businesses (a holistic viewpoint)

We note that the main area of focus of company taxation is Corporate Income Tax (CIT).

However, a fair allocation of resources should imply a global vision of taxation: the entire spectrum of direct and indirect contributions should be taken into account. Mandatory

contributions, local taxes, and environmental levies are integral parts of the tax system and reflect the overall contribution of a company in a given country.

When considering changes to the CIT system, the value of assets (tangibles and intangibles) and of risks should also be taken into account.

viii. Prioritizing growth and free movement of capital and investment

As regards the substantive elements of, and commitments in, the Multilateral Convention, we urge the Ad Hoc Committee to focus on initiatives that foster growth and that ensure freedom of capital movement and investment, as these are key elements to generate tax revenues.

We note that some suggested priorities are already the subject of existing work in other forums. We fear that this will lead to fragmentation and urge the Ad Hoc Committee to take this into consideration.

2. Specific comments on the Zero-draft

ix. As regards the “Principles” section:

We very much welcome the inclusion of “certainty” for taxpayers and governments (“increase certainty for taxpayers and governments”).

As this is a key issue for the stabilisation of the international tax system and global trade, we would recommend strengthening the language as follows:

“- ensure tax and legal certainty for taxpayers and governments.

- be sufficiently flexible, resilient and agile to ensure equitable results as technology and business models and the international tax cooperation landscapes evolve, while taking into account legal and tax certainty”.

Tax and legal certainty also imply that information and data of taxpayer (including companies) be strongly protected. While the international landscape in this area is not even, many countries have adopted high standards in this area. We believe that this should be reflected in the TOR so as to recognize the importance of this topic. In addition, the taxpayers’ guarantees are legally ensured in domestic tax systems. Any new international tax system should take account of such protections.

We would therefore suggest the following language:

“- require transparency and accountability of all taxpayers, while respecting the rights to privacy, data protection, taxpayers’ rights and guarantees and other fundamental human rights”.

x. **As regards the “Substantive elements” section**

We understand that the commitments are not yet determined. In light of our previous comments, we would recommend including tax and legal certainty as well as tax stability as commitments.

In our view, these are fundamental prerequisites to any efficient international tax system.

xi. **As regards the “Structural elements of the Framework Convention” section**

In line with our previous comments, we believe that the “structural elements” should take account of the overall coherence of the international tax system. We would therefore suggest to add the following:

*“relationship with other agreements **and overall coherence of the international tax system**”.*

xii. **As regards the “Early Protocols” section**

We believe that the breadth of proposed topic is extremely vast and ambitious. Experience in other forums shows that sufficient lead-time is needed to discuss and agree on major topics which re-define international taxation.

We would therefore respectfully suggest that work that has already be carried out or developed in other forums be taken into account at international level so as to avoid duplication and for resource-efficiency reasons (for both tax administrations and taxpayers). Sufficient lead-time should also be granted. Overall coherence would imply that Early Protocols be developed subsequently to the Multinational Convention.

Our suggestions at paragraph 14 are as follows:

*“14. Early protocols on a small number of specific priority areas should be developed simultaneously, **where possible**, with the negotiation of the framework convention. The following are specific priority issues to be addressed, **taking into account and where possible, building on and mutualising on the work already carried out at international level so as to avoid duplication**”.*

xiii. **Approaches and timeframe for negotiation**

As regards paragraph 16, we note that the intergovernmental negotiating committee would be convened in New York and initially in 2025 and 2026 for a number of sessions.

We call for consideration to be given that part of the work and interaction with business may take place also in Geneva so as to facilitate broader participation, since in-person participation only in New York may create difficulties and resource strains for business representatives.

We would recommend amending paragraph 17 in line with our comment above.

*“17. The intergovernmental negotiating committee should begin negotiating the early protocols described above at the same time **where possible**, as it begins the negotiation of the framework convention, with the aim of finishing the negotiation of such protocols **within***

a reasonable timeframe after the conclusion of the negotiation of the framework convention, to optimize coordination between the documents”.

We would recommend amending paragraph 20 in line with our previous comments:

*“20. Throughout its work, the intergovernmental negotiating committee should take into consideration, **build on and mutualise** the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels”.*

(1997 words including this).