

NIGERIA'S COMMENTS ON THE ZERO DRAFT TERMS OF REFERENCE FOR A UNITED NATIONS FRAMEWORK CONVENTION ON INTERNATIONAL TAX COOPERATION

General Comments

1. Nigeria commends the Chairman and members of the Bureau of the Ad Hoc Committee to elaborate the Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation (AHC) for the release of the zero draft of the Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation. Nigeria notes that the draft encapsulates most of the vital issues raised by members of the committee in the previous sessions. Recognizing the importance of the ToR as a foundational document for the Framework Convention, Nigeria emphasizes the need to build on the draft to produce a robust ToR by the end of the 2nd substantive session.
2. Nigeria aligns with the comments submitted on behalf of the African Group and submit the following specific comments as her input into the process:

Introduction

3. We assert that the preamble is crucial for setting the context and understanding the work's background. By linking the convention to its founding resolutions, the preamble provides a strong foundation, anchoring the framework to initiatives like those articulated in resolutions 78/230, 77/244, and 69/313. Thus, we support the inclusion of a preamble in the draft.

Objective

4. Nigeria suggests refining paragraph 7(a) to read: "Establish the fundamental principles that ensure the full inclusiveness and effectiveness of international tax cooperation for all parties, including developing countries, in terms of substance and process." Additionally, paragraph 7(b) should be revised to state: "Create a governance structure for international tax cooperation that can identify and address both current and future tax-related challenges, while upholding each Member State's tax sovereignty." We also propose revising paragraph 7(c) to: "Form an inclusive, fair, transparent, efficient, and effective international tax system for sustainable development, aimed at enhancing the legitimacy, certainty, resilience, simplicity, and

fairness of international tax rules, while tackling illicit financial flows and other challenges to strengthening domestic resource mobilization." We strongly oppose incorporating "complementarity" within the objectives, as this would downgrade the Convention to a supplementary instrument addressing gaps left by other bodies.

Principles

5. With respect to this paragraph, it is suggested that:

- The clause: "... while respecting the rights to privacy and other fundamental human rights" be deleted.
- A new clause 3 be inserted thus: "Minimize tax evasion and avoidance".

Substantive Elements of the Framework Convention

6. Nigeria believes that parties to the Framework Convention should have the flexibility to commit to a wide range of significant issues. The current text of paragraph 10 seems too restrictive, limiting the scope of potential commitments. We propose that this paragraph be revised to be more open-ended, allowing for comprehensive commitments during negotiations. Moreover, it is crucial to include specific commitments on combating illicit financial flows and the recovery and repatriation of taxes from such illegal activities. Additionally, Nigeria emphasizes the importance of reviewing the definition of a permanent establishment to reflect the evolving business landscape. Early protocols should prioritize addressing the taxation of the digital economy and income from cross-border services. This focus is essential as developing countries face significant challenges in effectively taxing digital services and managing cross-border transactions under the current international tax framework.

- In Paragraph 15, the reference to exchange of information for tax purposes should be redrafted to read: "effective exchange of information for tax purposes."

Capacity Building

7. Nigeria proposes amending paragraph 11 to state: "Recognizing that respect for tax sovereignty necessitates inclusive and effective participation in international tax cooperation, anchored on procedures that consider the varying needs, priorities, and capacities of all countries to meaningfully contribute to norm-setting processes without

undue restrictions, while supporting them in doing so, including providing opportunities to participate in agenda-setting, debates, and decision-making, either directly or through country groupings, according to their preference.” Furthermore, paragraph 12 should be enhanced to ensure that the convention consolidates or coordinates all capacity-building efforts of the United Nations and its agencies under a subsidiary body within the framework, guaranteeing effectiveness and inclusiveness.

Structural Elements of the Framework Convention

8. Nigeria recommends adding an advisory body to the framework’s structure. This body should oversee the technical aspects of the framework’s operations on behalf of the Conference of the Parties (CoP), meeting infrequently to issue mandates or approve work carried out.

- On paragraph 13, we propose the inclusion of ‘procedures for development, adoption, and amendments of protocols.’

Specific Priority Areas to be Addressed in Early Protocols

9. We emphasize the need to prioritize “the taxation of the digital economy” as an early protocol. The diminishing prospects for effective and timely implementation of Pillar 1 Amount A have led to a proliferation of national rules taxing the digital economy, such as Digital Service Taxes and significant economic presence rules. Prioritizing this area will help prevent fragmentation of international tax rules and provide relief for countries struggling to tax this sector effectively. Additionally, the framework should include commitments on illicit financial flows, recovery and repatriation of taxes, and address the challenges posed by the changing landscape of cross-border services.

Approaches and Timeframe

10. All countries share the common goal that there is the need for a coherent and stable international tax system that is acceptable to as many participants in the global economy as possible. We reiterate that UN rules of procedure are inherently aimed at consensus but are built on the recognition that the majority of countries need to be able to address issues if differences prevail. As a subsidiary body of the General Assembly, this principle guides the work of this Committee as reflected in Annex I of A/AC.295/2024/2. We therefore reiterate

our position that the rules of procedure of the Assembly apply (A/520/Rev.20) should continue to apply to any subsidiary body of the General Assembly.

11. Developing countries suffer most from the current financing gap, and the convention should be developed as early as possible to help reduce this gap. We believe 18 months for developing the convention and the early protocols is sufficient.

12. The early protocols should be developed simultaneously with the convention and adopted together.

Resources to Support the Work of the Negotiating Body

13. We request the Secretary-General to provide the intergovernmental negotiating committee with the necessary facilities and resources to support the work of the Committee. We stress that these resources must include a technical secretary from the Department for General Assembly and Conference Management (DGACM) as well as a substantive secretariat from DESA.

Conclusion

14. We believe that this zero draft reflects most of the inputs of members during the first substantive session. It is, therefore, a critical base to start and conclude the committee's assignment as we move into the final session. We look forward to the successful completion of this process towards developing a United Nations Framework Convention on International Tax Cooperation.