

Contribution of the Portuguese delegation to the Ad Hoc Committee (AHC) in respect of the Bureau's Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Dear AHC Chair, Mr. Ramy Youssef,

Dear AHC Bureau members,

Considering PRT's willingness to engage constructively in the process leading to a Framework Convention on International Tax Cooperation (FC), and our desire to promote an efficient, effective, inclusive, meaningful and robust process at the UN level in the area of international tax cooperation, that will help to promote stability and reliability within the international tax system;

Having in mind the content of the UNGA Resolution 78/230 and of the agreed common position of the EU and its Member States of 25th April 2024, presented as a general statement during the Ad Hoc Committee's First Session, as well as PRT's formal and informal interventions in the discussions that took place during that AHC First Session;

Recognizing that the Terms of Reference for a UN Framework Convention on International Tax Cooperation are crucial to clarify and determine how future work will be structured, including high-level commitments and procedural rules, that way assisting the UNGA debates and decisions on how to set up the FC negotiation body;

Taking into account the deadline set and the precise numerical limit of words set up for the current exercise;

We would like to submit to your consideration the following contributions in respect of the June 7th Zero Draft Terms of Reference for a UN Framework Convention on International Tax Cooperation (ToR).

In relation to the structure of the draft ToR:

- It is still unclear what is the purpose of the **Preamble**. Given its content, it appears to act more like a guiding principle for the FC negotiating body to consider throughout its work. Besides, it may well be streamlined, so that it just refers to the UNGA Resolution 78/230, since this Resolution already contains the pertinent references to UNGA Resolutions 77/244 and 69/313.
- Since it can be advisable to have a reference in the ToR in respect of principles for the FC negotiating body to consider throughout its work, we suggest to have § 6 as a specific Chapter or, alternatively, to insert the content of § 6 on the Chapter "**Approaches and time frame for negotiation**".
- The ToR should also recall that they do not prejudge the outcomes of the FC negotiating body and clarify that the work of that negotiating committee on any potential measure

should be based on substantive technical analysis in order to ensure that it will be a targeted and efficient solution.

In relation to the Objectives:

- As documented during the AHC First Session discussions, it is necessary to have a more precise idea and a common understanding of what is envisaged with the following references:
 - o “system of governance for international tax cooperation”;
 - o “tax-related illicit financial flows”; and
 - o “domestic resource mobilization”.

In relation to the Principles:

- It is necessary to explain in the document what may constitute a “country in special situation”.
- Furthermore, given our prior discussions on the subject, it is far from clear what is entailed by the proposed recognition, as principles of the FC, of some of the elements listed in § 9. Therefore, it is strongly advisable to further discuss the following so called ‘principles’, so that we can fully understand both their meaning and purpose:
 - o *“A Member State responsibility to ensure that its policies and practices do not undermine the effectiveness of the tax base or system of other Member States”;*
 - o *“Fairness in allocation that contributes to achieving sustainable development”;* and
 - o *“Transparency and accountability of all taxpayers”.*
- We suggest adding to the list included in § 9 that work on any potential measure under the FC should be based on substantive technical analysis in order to ensure that it will be a targeted and efficient solution.

In relation to the Substantive elements of the Framework Convention:

- As a complement to the commitments already mentioned for consideration on the zero draft ToR, we would suggest to amend § 10 putting in for consideration also the following relevant high-level commitments:
 - o Domestic resource mobilization;
 - o Capacity building; and
 - o Fostering tax compliance.

In relation to Capacity building:

- Given the content of §§ 11 and 12, this Chapter appears to be concerned only with capacity building for an inclusive and effective participation of Member States in the current norm-setting process in respect of international tax cooperation.
- Although it is a legitimate and relevant concern that deserves to be dealt with in the ToR, it does not cover all the potential ramifications of this theme (capacity building).

Therefore, we suggest amending the Chapter's heading consistently, so that it explicitly refers to this specific type of capacity building (for example: Capacity Building for Member States participation in the international tax cooperation).

In relation to the **Structural elements of the Framework Convention:**

In addition to the elements already referred to in § 13, we believe that the ToR should mention that the FC would also have to include, at least, the following substantive and procedural elements:

- Rules of interpretation;
- Decision-making process;
- Signature;
- Ratification;
- Entry into force;
- Reservations;
- Withdrawal;
- Amendments;

In relation to the **Specific priority areas to be addressed in early protocols:**

- We believe that it is advisable for the ToR to point out a limited number of protocols to be developed as soon as the negotiations of the FC are concluded.
- We note that developing early protocols in parallel to the negotiation of the FC remains an open issue to be further discussed by Member States and that the option to develop so called "early protocols" was merely suggested as a possible course of action and, only as such, it can be reflected in the ToR.
- Early protocols will only be a viable way of action if (and when) there is already a sufficient agreement on the approach to a specific item. This circumstance should be reflected on the Chapter's heading, eliminating "early", as well as on § 14, which should be amended to: "Early protocols on a small number of specific priority areas **could** be developed **after** the negotiation of the framework convention."
- The § 14 list of specific issues should, in any case, be presented between square brackets.
- For the sake of this initiative, topics for protocols should focus on areas with the broadest consensus possible and agreement (least controversial topics), avoiding issues that are already under negotiation or those where there are already internationally agreed standards. Therefore, it is appropriate to conduct an assessment and discuss an exhaustive analysis of a small number of issues prior to the prioritization of certain topics over others.

In relation to the **Approaches and time frame for negotiation:**

- It is necessary to have greater clarity in the ToR about the procedures that will be followed by the FC negotiating body in the negotiation and adoption of the text of the FC and its protocols, similarly to what has already been done in other UN processes.

- Since this initiative is targeted at achieving a generally accepted result, it should be stressed the importance of a consensus-based decision-making (note that such a statement does not prevent the ToR to also suggest the adoption of a subsidiary decision-making rule when consensus is not possible).
- In relation to § 16, we suggest amending its final sentence as following: "(...) and submit the final text of the framework convention and of **any** early protocol to the General Assembly for consideration (...)."
- In relation to § 17, we suggest amending its initial sentence as following: "The intergovernmental negotiating committee **could consider to** begin the **negotiations of an** early protocol **since it has begun** the negotiations of the framework convention (...)."
- Also in relation to § 17, we reiterate the excessive demand over Member States resources that results from the suggestion that the intergovernmental negotiating body should begin negotiating the early protocols while it also starts the negotiations of the FC.
- Still regarding § 17, we also note that it is not possible to have a single timeframe that fits every potential item to be covered by early protocols, so we recommend that the ToR mention, instead, the need for the negotiation of any of such protocols to be completed within a reasonable timeframe after concluding the negotiations of the FC. In addition, we note that the adequacy of any specific timeframe for the negotiation of early protocols will depend on the number of protocols and their respective items. In short: We find, at this stage, premature for the ToR to suggest a single specific deadline for finalising all early protocols.
- In relation to § 20, we suggest amending it as following: "Throughout its work, the intergovernmental negotiating committee **should avoid duplicating the work of other relevant fora and it** should take into consideration potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions/**organizations** involved in tax cooperation at the international, regional and local levels."
- It is in our best interest to safeguard the possibility of the FC to have at its disposal other instruments beside protocols (best practices, recommendations, other soft law instruments), circumstance that can be also foreseen in this Chapter.

Lisbon, 21st June 2024