

SPANISH COMMENTS to the call from the Chair of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Spain appreciates the invitation to provide comments regarding the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation.

OBJECTIVES

Starting with the objective foreseen in the paragraph 7.b) of the Zero Draft, we believe that to establish a system of governance for international tax cooperation is inherent in a Framework Convention, as stated in the Secretariat presentation on technical clarifications (bureau meeting of June 4). It is a core function and distinctive feature of a Framework Convention; therefore, it should not be considered as an objective.

Regarding paragraph 7.c) of the Zero Draft, we understand that Resolution 78/230 refers to the need of strengthening fairness, transparency, inclusiveness and effectiveness of the international tax system, more than to establish a new one. In that regard, we believe we should stick to the objective of promoting a more inclusive, fair, transparent, efficient, equitable, and effective international tax system.

PRINCIPLES

In relation to the principles established by the Zero Draft (paragraph 8-9), for the sake of consistency and to avoid duplications, it would be appropriate to introduce as a principle, the provisions of paragraph 6.d) of Resolution 78/230:

“To take into consideration 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”.

SUBSTANTIVE ELEMENTS

With regard to the substantive elements, Spain considers that the commitments mentioned envisaged in paragraph 10 of the Zero Draft should be high-level, and complementary to already existing commitments, leaving the most controversial aspects out of consideration. It is therefore proposed either to replace the word “*should*” by “*could*” or to limit it to the following issues:

- Domestic Resource Mobilisation (DRM);
- Capacity building;
- Effective taxation of high-net-worth individuals (HNWI), including wealth taxation;
- Ensuring that tax measures contribute to addressing environmental challenges;

STRUCTURAL ELEMENTS OF THE FRAMEWORK CONVENTION

Continuing with structural elements (paragraph 13) it is our view that the reference to the relationship between the framework convention and domestic law is a complex aspect that depends on the internal legal system of each country. i.e Constitutional Law. This reference may be problematic since the framework convention must in any event respect the constitutional law. Therefore, we believe that the elimination of this reference should not be a matter of concern.

SPECIFIC PRIORITY AREAS TO BE ADDRESSED IN EARLY PROTOCOLS

Regarding the priority areas that could be addressed in early protocols (paragraph 14-15), Resolution 78/230 (paragraph 7.e) requests the Ad Hoc intergovernmental Committee in elaborating the draft terms of reference, to consider simultaneously developing early protocols, while elaborating the Framework Convention. Therefore, the clause is conceived as optional, not mandatory. In addition, it states "priority issues" while the Zero Draft includes a long list of issues.

We consider that the list includes a too large number of specific issues and therefore it would be appropriate to develop an exhaustive analysis and prioritize some issues over others. In addition, we understand that the early protocols should be limited to non-controversial issues and that we should avoid issues that are already under negotiation in other forums or those with internationally agreed standards.

APPROACHES AND TIME FRAME FOR NEGOTIATION

Regarding the approaches and time frame for the negotiation (paragraph 16-20) we understand that the terms of reference should include the regulation of the decision making process as one of the important elements in the negotiation process.

Also, we should take into consideration the paragraph 1 of Annex I approved in Organizational session (New York, 20–22 February 2024): "Given the importance of international tax cooperation, every reasonable effort should be made, within

the available time frame for negotiations, to seek consensus on substantive matters in the ad hoc committee.”

Consensus should be required in the negotiation and adoption of the text of the UN Framework Convention on International Tax Cooperation and its protocols, as well as for the work of the Committee, with the objective of achieving a generally accepted result.

On the other hand, and in order to guarantee consistency between the Framework Convention and early protocols we consider that a sequential work is needed. Thus, we propose that once the Framework Convention has been developed, the discussion on early protocols will begin. The timeframe to be foreseen for the negotiations of early protocols will depend on the number of protocols and on the subjects they cover.

This complex process involves tax and legal systems of many countries and therefore requires time. The deadlines proposed in the current Zero Draft are too demanding given the resources that would have to be committed to the simultaneous negotiation of the framework convention and the early protocols.