

UK comments on the zero draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

This statement should be read alongside the UK's Written Statement published on 15th March 2024¹

Thank you for the opportunity to provide comments on the zero draft of the Terms of Reference (ToRs). The UK remains committed to working in partnership with other jurisdictions and stakeholders to create a stronger and more inclusive international tax system, building on existing international cooperation.

The first substantive session of the Ad Hoc Committee saw many viewpoints put forward, some of which carried a broad consensus, and others of which were more contentious.

Through the course of the remaining discussions, we think it is critical to build on the areas of consensus and to find appropriate compromises on the areas of contention, to ensure that the final ToRs take account of the full range of views expressed and share broad support.

Below are our initial comments on the zero draft. Given the limits on time and word count, we will provide further comments during the second session.

Objectives

Resolution 78/230, in paragraph 1, states that the Framework Convention is needed “in order to strengthen international tax cooperation and make it fully inclusive and more effective.” However, paragraphs 7b and 7c of the zero draft ToRs state that the objectives of the framework convention should be to establish a “system of governance” and an “international tax system” respectively. In both cases, we believe this does not reflect resolution 78/230.

We therefore ask that in the Objectives section, “system of governance” and “international tax system” be replaced by “framework”.

¹ [Inputs | Financing for Sustainable Development Office \(un.org\)](#)

Principles

As we set out in our written submission in March, and reiterated in the first substantive session in April/May, the UK strongly believes the Terms of Reference for the future Framework Convention should be guided by three core principles for effectively strengthening international tax cooperation and delivering for all:

1. Maximising participation and coverage

In order to maximise the effectiveness of any international agreement, it is important that it should reflect the views and interests of a diverse range of countries, so that it can attract the widest possible support for implementation. For taxation agreements in particular, it is often the case that a critical mass of countries is needed for them to be effective, with a subsequent need for comprehensive participation and cooperation to ensure they are implemented effectively and can minimise tax-related illicit financial flows.

When we proposed including this as a principle at the first substantive session, there was no objection. **We therefore ask to add this principle at paragraph 9, which could be phrased as “maximise participation and coverage, by reflecting the views and interests of a diverse range of countries, so that the Framework Convention can attract the widest possible support for implementation.”**

2. Comparative advantage

We believe the UN Framework Convention should focus its work on where it can add most value, over and above effective work happening elsewhere. That means avoiding multiple international organisations undermining each other’s work.

We acknowledge that this was a point of contention in the first substantive session. However, we believe it is essential that the work of the UN is complementary to the work of other international organisations - both to ensure countries can make best use of limited resources and expertise (especially given the resource-intensity of international tax negotiations), and to provide certainty for taxpayers and tax administrations. Focusing on areas of comparative advantage and achieving complementarity avoids the risk of fragmentation of global tax standards and consequent legal ambiguity. Fragmentation would create more opportunities for regulatory arbitrage and illicit financial flows, and could weaken international tax cooperation for years to come. Competing standards could also lead to double taxation, which in turn would reduce cross-border investment.

Resolution 78/230 emphasises the importance of complementarity under paragraph 6(d). We note that this wording is included in the zero draft under “Approaches and timeline for

negotiation”, while 78/230 paragraphs 6(a), 6(b) and 6(c) have been included under “Principles”. This suggests that 78/230 paragraph 6(d) carries a different status to 78/230 paragraphs 6(a), 6(b) and 6(c). There is no reason to deviate from resolution 78/230. **We therefore request that paragraph 20 of the zero draft be placed instead within paragraph 9, under “Principles”.**

3. Subsidiarity

A UN Framework Convention should consider the nature of cooperation that would be most effective and most proportionate in achieving the objectives identified. It is a fundamental principle of tax sovereignty that, where possible, decisions on tax should be for sovereign jurisdictions to take. It follows that international agreements should focus on issues that cannot be effectively addressed at jurisdiction level.

In doing so, it is important to consider the right instrument for enacting each measure, with protocols being only one option. Other instruments (e.g., recommendations, voluntary actions, soft law, exchanging best practices) may be more effective and efficient means to enhance international tax cooperation in some areas. In many cases, these alternatives could be agreed more quickly and deliver better results. **We therefore request adding “or other instruments” to all references to protocols, to give the future negotiating committee flexibility to determine the most effective mechanism to address specific issues.** It is important that the ToRs do not unduly limit the flexibility of the negotiating committee in this regard. If the ToRs are too prescriptive, it will hinder the capacity of the committee to negotiate a Framework Convention that enhances tax cooperation in the most effective way.

Approaches

4. Appropriate timelines

Alongside the three principles set out above, we argued in our first written submission and the first substantive session for ensuring appropriate timelines. A central feature of an inclusive process is that the views of all members should be heard and considered. If discussions are rushed, this decreases the chance of a broad agreement, particularly given the inherent technicalities of tax policymaking. The negotiation of a framework convention is in itself a significant undertaking, and the simultaneous negotiation of protocols would greatly increase the complexity of the task. An arbitrarily short timeline would therefore not be appropriate. It also reduces the opportunity for resource-constrained Member States to fully participate. Capacity building can help here, and the UK continues to stand behind

proposals for mutual support and capacity building, but this takes time, and there is a limited pool of expertise.

In our first written submission, we encouraged a sequential approach, only negotiating protocols once the Framework Convention is finalised.

We noted, however, in the first substantive session, that some would prefer to take the Framework Convention and early protocols simultaneously. We therefore proposed a compromise, whereby we'd distinguish between the two phases of "developing early protocols":

- The first phase is *scoping and analysis*. Here, we would work towards a mutual understanding of what exactly is intended to be included within the early protocols, what are the points of consensus vs contention, and conduct any necessary analysis.
- The second phase is *drafting and negotiating*. Here, based on what we discussed in the first phase, we would draft the protocols or other instruments and negotiate the points of contention.

Our suggestion is that we undertake the *first phase* simultaneously with negotiating the Framework Convention, but that we begin the *second phase* only once the Framework Convention has been finalised.

This would allow us to make progress, and to consider how the content of the Framework Convention relates to the early protocols under discussion, while allowing us to focus our efforts on finalising the Framework Convention.

We therefore propose that paragraph 17 be amended to read:

"17. Alongside negotiating the Framework Convention, the intergovernmental negotiating committee should set aside time for scoping and analysis of early protocols, so that Member States are ready to begin drafting and negotiating those protocols or any other instruments as soon as the Framework Convention is finalised."

5. Inclusive and effective decision-making

There was much discussion at the first substantive session about decision-making. Some argued for decisions to be made purely based on majority vote and that decision-making should not be addressed in the zero draft. Others argued for seeking broad consensus. Still others argued for super-majorities.

We note that this issue is not covered in the zero draft of the ToRs. The UK continues to believe that part of the purpose of the ToRs is to set out how the negotiating committee will be conducted, and we believe that decision-making forms an essential part of that.

In terms of what the decision-making process should look like, we note that in all cases, UN practice is to seek consensus in the first instance. We believe that it is crucial to emphasise this in the ToRs, and different UN processes have used different variations of language to do so.

For example, the *Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction* states, “The intergovernmental negotiating committee should make every effort to adopt decisions and recommendations by consensus.”

Resolution 75/282 on *Countering the use of information and communications technologies for criminal purposes* states, “All decisions of the Committee on substantive matters without approval by consensus should be taken by a two-thirds majority of the representatives present and voting, before which the Chair, upon a decision of the Bureau, shall inform the Committee that every effort to reach agreement by consensus has been exhausted.”

We request that a placeholder be inserted into the section on “Approaches and time frame for negotiation”, for discussion in a dedicated agenda item in the second session, so that we can reach an agreement on decision-making.

6. Analysis

We note that the zero draft includes some highly contentious points from the first substantive session (e.g., timing of early protocols), while excluding others (e.g., decision-making).

Equally, there were some points raised in the first substantive session that nobody objected to, but have nevertheless not been included (e.g., the UK’s proposal for a principle of “maximising participation and coverage”, and proposals from others for a protocol on taxation of extractives). Meanwhile, there are some points that we do not believe were discussed at all in the session, but which have been included (e.g. the listing of some of the proposed topics for early protocols as being “the subject of future protocols” in paragraph 15, rather than being included in the list of “specific priority issues that could be addressed through such early protocols” in paragraph 14). We believe that, for an inclusive process, the text should reflect the range of views that were expressed in discussions, with a transparent process for resolving differences.

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We also think it is crucial that this process be founded on a thorough analysis of the issues to be resolved and options for resolving them. Without that, we will not be able to agree effective solutions, or will implement measures that have significant unintended consequences. Analysis will also enable us to identify where effective solutions are already in progress, versus where new solutions are needed. This has implications for the proposed commitments, where it is unclear exactly what is envisaged, or what parties would be required to do in support of them, which makes it difficult for us to comment on them at this stage. Similarly, for the proposed protocols, the topics are complicated, contentious, and the subject of existing international standards and/or negotiations. A much deeper level of analysis is needed so we can have a mutual understanding of what is envisaged – and this links to the points raised regarding timelines and complementarity.

We look forward to discussing the updated draft at the second substantive session and finding common ground on the outstanding issues, so we can create a stronger and more inclusive international tax system, building on existing international cooperation.