

South Centre Inputs on “Terms of Reference for a UN Framework Convention on International Tax Cooperation”

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I. Background

The [South Centre](#) is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre has [55 Member States](#) coming from the three developing country regions of Africa, Asia, and Latin America and the Caribbean. It was established by an [Intergovernmental Agreement](#) which came into force on 31 July 1995. Its headquarters are in Geneva, Switzerland.

The South Centre in 2016 launched the [South Centre Tax Initiative](#) (SCTI). This is the organization’s flagship program for promoting South-South cooperation among developing countries in international tax matters.

The South Centre submits the following inputs to the Chair of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation.

II. Overview

The South Centre congratulates the Chair and Members of the Bureau on their election as the Chair and Vice-Chairs of this all-important ad hoc committee to elaborate the Terms of Reference (ToR) for a UN Framework Convention on International Tax Cooperation (“UN Tax Convention”). The Committee has a genuinely historic mandate as it has to design the architecture of the long-standing demand of the developing world for a UN Tax Body.

The call for inputs poses the question, *“What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”*

As has been highlighted repeatedly by the South Centre and its Member States, the main problem of international taxation is the lack of an inclusive and efficient governance framework. The OECD-led system has been plagued by governance deficits and a process of negotiation of international tax rules characterized by lack of transparency, accountability and democracy has resulted in weak outcomes exemplified by the Two Pillar ‘Solution’. There can never be equitable and effective international tax rules as long the *process to make these rules* is not radically improved with an equal participation of all members of the UN.

Thus, the core requirement of the UN Tax Convention should be to solve the governance problem and create a genuinely inclusive *rules-based* architecture which can facilitate multilateral agreements on current and future international tax issues on the basis of fairness, equity, transparency, democracy and inclusiveness and bring coherence and efficiency to the international tax system.

At its essence, the Terms of Reference are a “to-do list” for the drafters of the Convention. They should thus contain the key elements of the Convention which can be fleshed out subsequently.

The Convention should be kept “light”, with a small number of articles. The core idea should be to create a strong Conference of Parties (COP) able to do ‘whatever it wants’, but especially setting the agenda, mandating the work to subsidiary bodies and having the power to decide *through democratic voting* whether the outputs produced are satisfactory or not.

The COP should be able to come up with whatever types of rules it sees fit. They could range from non-binding guidelines to international binding rules and treaties. The need for a wide range of modalities of international tax standards is based on the reality that one-size fits all approaches rarely work in international taxation. While for some regimes a minimum of effectiveness may need the participation of a significant number of states, others can operate on a bottom-up basis, creating cooperation between willing states that can gather momentum and spread more widely.

A Convention focused on solving the essential problem of governance can be finished within a reasonable time. It should also be designed in such a way that it can come into effect even if major developed countries – some well-known for their opposition to multilateralism despite rhetoric to the contrary – choose not to join it, and be open ended to include them later on if they wish to join.

Specific substantive issues could also be negotiated and potentially incorporated through protocols, but this can only happen after the Framework is completed and has a process in place for how protocols should be negotiated. It would be unwarranted to start negotiating protocols when there is no process in place for how to do so. Further, this should be done by the Conference of Parties to the Convention, not the Ad Hoc Committee preparing the ToR. At this stage, the most the Ad Hoc Committee could do in this regard is to recommend potential topics for consideration in a set of initial protocols.

With this overview, the key elements of the Terms of Reference for the UN Tax Convention have been devised as described below.

III. Key Elements for the UN Framework Convention on International Tax Cooperation

i. Principles

International agreements produced through the Convention should be underpinned by a development oriented approach that helps attain the Sustainable Development Goals (SDGs), equity in allocation of taxing rights, special and differential treatment for developing countries, access to exchange of information, tax rules that prevent Illicit Financial Flows, mutual administrative assistance, knowledge sharing and exchange of best practices in tax collection and dispute settlement, to name a few. Transparency, inclusivity, accountability and sustainability are some of the other key principles. This agreement can come as a broad or high-level commitment on the issues listed or any other international tax issues that parties may be willing to have such commitment on.

ii. Conference of Parties (COP)

The framework convention should establish the Conference of Parties (COP) -with some possible subsidiary bodies such as an Advisory Body, a Council on Tax Administrations, Technical Working Groups serviced by a secretariat- with a broad mandate to cover existing and emerging issues on international taxation. It should enable all countries to be equal partners in agenda-setting. The COP should be able to negotiate and adopt new rules and perform any function it deems necessary.

Essential to the success of the COP will be to have the participation of high level decision-makers from the Ministry of Finance or the tax administration, or a combination of both. This would ensure that they would be able to contribute effectively to the implementation of the Convention.

Lastly, Membership to the COP should be restricted to sovereign countries.

iii. Subsidiary Bodies: UN Tax Committee

The UN Tax Committee could be transformed into an expert subsidiary body of the Convention. It could have a 'mediation' function where it would act as an intermediary between the Secretariat and the Conference of Parties, providing expert

feedback over the technical outputs of the Secretariat before it was passed on to the COP. This is based on the understanding that the COP representatives may be high level functionaries who may not be able to fully go into the technical details of the standards produced by the Secretariat and hence the mediating role of the UN Tax Committee (UNTC) could be helpful. It could also have an advisory function where it can make suggestions to the COP for their consideration.

iv. Subsidiary Bodies: Technical Working Groups

Modelled on the Subcommittees of the UN Tax Committee, these would be intergovernmental standing bodies which would work round the year to produce the drafts of international tax standards for decision by the COP.

v. Subsidiary Bodies: Council of Tax Administrations

This would be a Council comprised of the Heads of Revenue Administrations from the Parties to the Convention. Such a body would ensure high-level engagement and that the outputs of the Convention are of relevance to its key users – tax administrations. The underlying idea is that heads of revenue administration must have structured engagement within the Framework.

vi. Decision Making

While consensus should be strived for, majority voting should be used if consensus is not possible.

vii. Secretariat

The composition and function of the Secretariat of the Conference of Parties (COP) are of critical importance. There may be a need for a strong and diverse Secretariat with sufficient technical expertise in view of the volume of work required for drafting the needed protocols and development of other international rules and standards. It is also to be noted that the alleged lack of capacity in the current UN Secretariat is mainly a problem of funding. Given sufficient funding, the UN will be easily able to recruit sufficient capacity.

viii. Legacy Issues

The convention should provide the treatment of the existing instruments, rules or standards such as the Base Erosion and Profit Shifting Multilateral Instrument (BEPS

MLI), Convention on Mutual Administrative Assistance in Tax Matters, etc developed by the existing forums.

ix. Implementation

The Terms of Reference could indicate how the Framework Convention would be enforced to ensure that parties are held accountable to the rights and obligations under the Convention. One option could be through a peer review mechanism.

x. Dispute Resolution

Given that the parties to the Convention would be held accountable for fulfilling their rights and obligations under the convention, the ToR should mention the need to create a dispute resolution mechanism.

xi. Capacity Building

The Convention should enable capacity building of developing countries in tax collection and also strengthen international cooperation in this aspect, especially between tax administrations. This should include South-South Cooperation and bottom-up consultations.

xii. Substantive Issues

The following issues are of particular relevance for developing countries and could be considered for early protocols (in no particular order):

1. Illicit Financial Flows
2. Exchange of information especially for a) services b) wealth including non-financial assets, and immovable property.
3. Taxation of services (digital or non-digital) given the base eroding nature of those payments.
4. Progressivity of the tax system, more specifically taxation of high and ultra-high net worth individuals.
5. Environmental taxation.
6. Tax Incentives.
7. UN Fast Track Instrument presently being developed by the UN Tax Committee

IV. Final Remarks

The UN Framework Convention on International Tax Cooperation opens up a once in a lifetime opportunity to fundamentally reform the international tax system so it is fairer for developing countries and can generate the much-needed revenues for achieving the Sustainable Development Goals. The South Centre will continue to provide support to its Member States and other developing countries in this historic negotiation.
