

# UN releases draft Terms of Reference for negotiating a Framework Convention on International Tax Cooperation

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## In brief

### What happened?

On 7 June 2024, the United Nations (UN) published a ['Zero Draft'](#) Terms of Reference (ToR) for a UN Framework Convention on International Tax Cooperation (Framework Convention) for public consultation. The deadline for comments is 21 June 2024. The draft ToR sets out the basic parameters and mechanisms of a Framework Convention, including its proposed objectives, principles, substantive and structural elements, and timeframe for negotiations. It also identifies certain priority areas to be addressed in early protocols including the taxation of the digitalised and globalised economy, cross-border services, and high net worth individuals. The draft also lists several additional topics that might be the subject of future protocols.

### Why is it relevant?

The UN's move to ramp-up its efforts in international tax has thus far been discussed at a high level, with limited information on the project's concrete ambitions. The ToR provides further insight into the potential scope of the proposed Framework Convention, indicating that the covered areas may indeed overlap with those addressed in other fora such as the OECD.

### Action to consider

Stakeholders' should provide comments by 21 June, which will inform the preparation of a (revised) draft text forming the basis for the discussions and negotiations during the Ad Hoc Committee's [Second Session](#) scheduled from 29 July to 16 August. A revised draft ToR will be circulated in mid-July.

## In detail

On 22 December 2023, the UN General Assembly adopted by majority vote the resolution '[Promotion of inclusive and effective international tax cooperation at the United Nations](#),' which calls for the development of a legally binding Framework Convention on international tax cooperation. An ad hoc intergovernmental committee was formed to draft a ToR for negotiating the Framework Convention, which should be finalised by August 2024 and submitted to the General Assembly at its seventy-ninth session (December 2024). The committee has a [20-member Bureau](#) including four members each from each of the five regional blocs - Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and Western Europe and Others. Its chair is the representative of Egypt and the committee strives to reach consensus but formally operates on the basis of majority vote.

A framework convention is a relatively novel feature of international cooperation. It is an umbrella document containing high-level political commitments concerning its general objectives, procedural rules, and institutional arrangements (including governance structure). The more specific rules establishing concrete obligations are developed on an on-going basis in the form of protocols. From a pragmatic perspective, protocols are themselves akin to international treaties, which can make them equally challenging to negotiate and ratify. However, the agreed principles and the governance structure provided by the Framework Convention could facilitate the development of protocols.

The draft ToR is the first step in the development of the Framework Convention, which will sketch out the anticipated objectives and principles. It also contains bracketed language on substantive elements that could be incorporated in the Framework Convention, involving for instance commitments on “fair allocation of taxing rights, including equitable taxation of multinational enterprises.” (Such comments are bracketed on whether they should be included in the Framework Convention or the detailed protocols). The areas to be addressed in the protocols are not bracketed and include, as priority issues:

- Taxation of the digitalized and globalised economy;
- Taxation of income derived from cross-border services;
- Tax-related illicit financial flows;
- Prevention and resolution of tax disputes; and
- Taxation of high-net worth individuals.

The ToR also lists several additional topics that might be the subject of future protocols, including tax measures on environmental and climate challenges, exchange of information for tax purposes, mutual administrative assistance on tax matters, and harmful tax practices. Those topics are not referred to as ‘priority’ and presumably the list remains open for the inclusion of other topics in the future.

Notably, the proposed ToR is silent concerning the future decision-making process for negotiating the terms of the Framework Convention. The lack of clarity on decision making and the role of consensus has caused tensions between countries, and should be especially followed by multinational companies considering cross-border profit allocation issues are identified as potential priority protocols.

**Observation:** The draft ToR makes the potential for duplication of work by different International Organizations (IOs) increasingly clear. For instance, it includes the taxation of the digitalised and globalised economy on the list of priority issues even when the OECD’s Inclusive Framework has [signalled](#) that it is finalising negotiations on [Pillar One](#) (although there is still exists uncertainty on when and whether the Pillar One multilateral convention could

enter into force). Such duplication seems inevitable unless the IOs can find a way to cooperate on a complimentary basis.

**Observation:** The European Union and other countries like the United States and the United Kingdom have said they will not support a Framework Convention that overrides tax work agreed on at the OECD. They have instead suggested objectives such as increasing domestic resource mobilisation and capacity building. Nevertheless, in May the G7 Finance Ministers and Central Bank Governors agreed and issued a [Communiqué](#) reiterating the importance of consensus-based decision making at the UN, prioritisation of issues more likely to achieve consensus, and focusing on enhancing domestic resource mobilisation and capacity building in tax matters for developing countries.

The draft ToR proposes that the Framework Convention should be negotiated by a Member State-led negotiating committee in 2025 and 2026, with the final text and early protocols submitted to the UN General Assembly at its session in September 2026. The early protocols will be negotiated at the same time as the Framework Convention with the aim of finishing negotiations of such protocols no later than six months after the conclusion of negotiations of the Framework Convention.

**Observations:** Negotiators should keep in mind that the Framework Convention and the related specific protocols will need to be ratified by a significant majority of Member States in order to achieve the stated objective of making international tax cooperation not only more inclusive but also more effective. The present draft ToR is reported as “representing the Bureau’s efforts to achieve consensus.” Hopefully, the comments received by the Ad Hoc Committee during the on-going consultation and the July/August discussions will lead to a final ToR that addresses the concerns of stakeholders at large.

## Let’s talk

For a deeper discussion of how the draft ToR and the Framework Convention might affect your business, please contact:

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