

UN Secretary General
Report on **the
Promotion of inclusive
and effective
international tax
cooperation at the UN**

Policy Briefing – Preliminary
Scenarios Analysis

(For ICC Members only)



Overview

The UN Secretary General has published on August 8th a report in response to General Assembly resolution 77/244 on the “Promotion of inclusive and effective international tax cooperation at the United Nations.” This report and the options outlined in it will represent the basis for the intergovernmental discussions to take place at the next UN General Assembly session, which will open in September 2023.

The report analyses existing arrangements in international tax cooperation, identifies additional options to make such cooperation fully inclusive and more effective, and outlines potential next steps. The report was built also taken into consideration different stakeholders’ input that were received in response to the public consultation launched in March 2023.

According to the conclusion outlined in the report, enhancing the UN role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective.

In this regard, the report identifies for consideration **three options**, each of which would need to be developed and agreed upon through a United Nations, Member State-led process:

- i) **a multilateral convention on tax;**
- ii) **a framework convention on international tax cooperation; or**
- iii) **a framework for international tax cooperation.**

Finally, the report outlines the next steps also in relation to the case in which the General Assembly will not be able to reach an agreement on a way forward at its next session.

In this case, the 4th suggested option is the establishment of **a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation.**

The decision on which option will be taken by Member States through **a resolution to be adopted during the next General Assembly session** (General Assembly 78th session will open in September with intergovernmental discussions taking place between October and December). According to General Assembly rules, the adoption of such resolution will be **by majority vote**.

Budgetary decisions will also need to be taken by members States (through the 5th Committee of the GA) to support any of the outcome included in the adopted resolution.

With this Policy Briefing – building on other ICC policy areas of work and previous experiences – we would like to provide ICC members with **a preliminary scenario analysis** based on the options and next steps that are outlined in the UN Report. It also draws comparison from other policy areas where the UN has set up bodies or frameworks and ICC has been actively and constructively contributing to.

SCENARIO 1: A multilateral convention on tax (Option 1 UN Report, para 5.3-5.4)

<p>What it will look like</p>	<p>It will be a binding legal agreement that establishes enforceable obligations regarding international tax cooperation. It can be broad or more specific depending on the subject that will be addressed. Examples that are included in the UN report range from information exchange to a potential modification of parties’ taxing rights. It will have a primarily “regulatory” nature.</p>
<p>Viability</p>	<p>This option is likely to be considered where there is political agreement on the need to address an issue on a global level and there is consensus on a solution. The convention could also only address specific issues if a consensus exists only with respect to them, and there are fewer chances to have a more comprehensive agreement (The example of a specific issue included in the UN Report is a UN Multilateral Convention on Tax-Related Illicit Financial Flows. However, this appears to be quite vague).</p>
<p>Decision-making</p>	<p>Negotiation: During the preliminary negotiations, General Assembly rules will be applicable. The decision making on the adoption of any convention will be agreed in the terms of reference.</p> <p>The terms of reference will state how every convention will be adopted.</p> <p>This means that, in the terms of reference, Member States could require consensus for the adoption of any new treaty (differently from General Assembly rules where vote is by majority).</p> <p>Terms of reference will also state the modalities of other stakeholders’ participation (i.e., who can engage, etc.)</p> <p>On-going: Terms of reference for the Convention will be supplemented by Conference of Parties</p>
<p>Implementation</p>	<p>Will be set out in the convention</p>
<p>Dispute Resolution</p>	<p>Will be set out in the convention</p>
<p>Next Steps Ahead</p>	<ol style="list-style-type: none"> 1. Establishment of a Member State-led, intergovernmental ad hoc advisory expert group to prepare draft terms of reference for the negotiation of a convention. 2. The expert group will examine: <ol style="list-style-type: none"> a) the issues that could be covered by the convention;

	<p>b) recommend whether those issues would be better addressed through a comprehensive multilateral tax convention, or a convention focused only on specific issues relating to international tax cooperation.</p> <p>3. These terms of reference will need to be presented at the next session of the General Assembly (i.e., earliest by September 2024)</p> <p>4. If the General Assembly agree on the recommendations/terms of reference, it could establish a Member State-led, intergovernmental ad hoc negotiating group to negotiate the convention.</p>
Expected timeline	<p>Based on other convention processes we would expect an effort to conclude preparatory work in one year. Terms of reference presented at the earliest September 2024 (although, unlikely that they will be able to present anything in one year).</p> <p>Target to conclude a Convention in 3 years (September 2027)</p> <p>However, typically legally binding agreements take between 5-7 years (no outcome might be available before 2030).</p>

SCENARIO 2: A framework convention on international tax cooperation (Option 2, UN Report para. 55 - 57)

What it will look like	<p>It will be a binding agreement that establishes a general system of governance in the area of international tax cooperation; it will be complemented through protocols which will address specific issues (par. 55)</p>
Viability	<p>This option could be considered in the case where there is no immediate political consensus on binding substantive measures and/or the object of the convention.</p>
Decision-making	<p>Negotiation: During the preliminary negotiations, General Assembly rules will be applicable.</p> <p>The decision making on the adoption of any convention will be agreed in the terms of reference.</p> <p>The terms of reference will state how every convention/protocol will be adopted.</p> <p>This means that, in the terms of reference, Member States could require consensus for the adoption of any new treaty or instrument (differently from General Assembly rules where vote is by majority).</p>

	<p>Terms of reference will also state the modalities of other stakeholders participation (i.e., who can engage, etc.)</p> <p>On-going: Terms of Convention supplemented by Conference of Parties</p>
Implementation	Will be set out in the convention
Dispute Resolution	Will be set out in the convention
Next Steps Ahead	<ol style="list-style-type: none"> 1. Establishment of a Member State-led, intergovernmental ad hoc advisory expert group to prepare draft terms of reference for the negotiation of a framework convention. 2. The expert group will examine: <ol style="list-style-type: none"> c) the issues that could be covered by the convention; d) recommend whether those issues would be better addressed through a comprehensive multilateral tax convention, or a convention focused only on specific issues relating to international tax cooperation. 3. These terms of reference will need to be presented at the next session of the General Assembly (i.e., earliest by September 2024) 4. Possible simultaneous establishment of a Member State-led, intergovernmental ad hoc advisory expert group to determine the possible negotiation of substantive protocols while the framework convention is also being negotiated. 5. If the General Assembly agree on the recommendations/terms of reference, it could establish a Member State-led, intergovernmental ad hoc negotiating group to negotiate the convention.
Expected timeline	<p>Same timeline as Scenario 1. Specific protocols can be extremely laborious to be adopted, so it can typically take 8 years.</p> <p>Once a framework convention is established, an annual conference of the parties should be expected, where other workstream can be picked up, making it a “living convention”.</p>
Comparable structure in other policy areas	<p>United Nations Framework Convention on Climate Change (UNFCCC), with its system of Protocols and Conference of the Parties (COP).</p> <ul style="list-style-type: none"> • The United Nations Climate Change Conference are yearly conferences held in the framework of the UNFCCC. They serve as the formal meeting of the UNFCCC Parties (Conferences of the Parties) (COP) to assess progress in dealing with climate change, and

	<p>beginning in the mid-1990s, to negotiate the Kyoto Protocol to establish legally binding obligations for developed countries to reduce their greenhouse gas emissions. Since 2005 the Conferences also served as the Meetings of Parties of the Kyoto Protocol (CMP) and since 2016 the Conferences also serve as Meeting of the Parties to the Paris Agreement (CMA).</p> <ul style="list-style-type: none"> • The Conference of the Parties is also assisted by subsidiary Bodies that can be permanent or temporary. • The work under the UNFCCC is facilitated by a secretariat in Bonn, Germany. The secretariat is established under Article 8 of the Framework Convention and headed by the Executive Secretary.
--	--

SCENARIO 3: A Framework for international tax cooperation (Option 3, UN Report para. 58 - 60)

What it will look like	Non-binding agenda for coordinated actions, at the international, national, regional and bilateral level, on improving tax norms and capacity
Viability	There is no political consensus on substantive measures, or some aspects of a problem require a multi-level approach or are best approached at a national, regional or bilateral level rather than at a global level, although such approaches remain guided by the framework
Decision-making	General Assembly rules
Implementation	Voluntary participation by States in international, national, regional, or bilateral actions, as established in framework
Dispute Resolution	Will be set out in the convention
Next steps ahead	Establishment of a Member State-led intergovernmental ad hoc expert group will be established and charged to serve as the preparatory committee to undertake the substantive and organisational preparation of the proposed framework (i.e., terms of reference).
Expected timeline	Terms of reference presented at the General Assembly at the earliest September 2024 (although, unlikely that they will be able to present anything in one year).

	If the terms of reference are adopted, a framework could be then started only after contingent to budgetary contributions from Member States.
Comparable structure in other policy areas	<p>Internet Governance Forum (IGF)</p> <ul style="list-style-type: none"> • This was formally announced by the United Nations Secretary-General in July 2006 and was first convened in October–November 2006. Since then, it has held an annual meeting. • It consists of a multistakeholder governance group for policy dialogue on issues of Internet governance. • It brings together all stakeholders in the Internet governance debate, whether they represent governments, the private sector or civil society. • Following an open consultation meeting called in February 2006, the UN Secretary-General established an Advisory Group (now known as the Multistakeholder Advisory Group, or MAG), and a Secretariat, as the main institutional bodies of the IGF. • The Secretariat, based in the United Nations Office in Geneva, assists and coordinates the work of the Multistakeholder Advisory Group (MAG)

SCENARIO 4: No agreement on the way forward reached by the General Assembly (Included under “Next Steps” UN Report par. 67)

What it will look like	The Report mentions that in case the GA does not reach an agreement on the way forward, a possible next step is the institution of a Member State-led, open ended ad hoc intergovernmental committee.
Function	The Committee will recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation
Expected timeline	<p>Ad-hoc committee could be mandated by a decision of the General Assembly by majority vote either this or next year at any given point. Unlikely for this year, they will have to determine the terms of reference also in this case (scope and participation).</p> <p>If Member States cannot agree on the 3 options, we expect negotiations or discussions will be reconvened in 2024 with the</p>

	<p>view of agreeing on the possible scope of an open-ended ad hoc working committee.</p> <p>The creation will need to be mandated by a majority resolution of the General Assembly.</p> <p>Typically, the frequency of meetings of these types of committees is 3 to 4 meetings per calendar year. Such committees will typically submit a report each year to the General Assembly for consideration and/or reflection for steps ahead.</p>
--	--

About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

