

KENYA'S COMMENTS ON THE ZERO DRAFT TERMS OF REFERENCE FOR A UNITED NATIONS FRAMEWORK CONVENTION ON INTERNATIONAL TAX COOPERATION

Kenya wishes to thank the Chair of the Ad Hoc Committee, the UN Secretariat and the Bureau members for the work that has gone into developing the zero draft Terms of Reference. As a member of the African Union, Kenya would like to align with the comments submitted on behalf of the Africa Group. Kenya generally supports the zero draft Terms of Reference as presented but would like to make comments on the following areas:

1. Principles

Kenya supports the proposed principles that will guide the efforts to make international tax cooperation fully inclusive and more effective. However, the last principle that reads '*require transparency and accountability of all taxpayers, **while respecting the rights to privacy and other fundamental human rights***' could negatively affect the effectiveness of international tax cooperation.

The second part of this principle (in bold) is very wide in scope and could be used to circumvent the requirement for transparency and accountability. The words in bold should therefore be deleted.

2. Substantive elements of the Framework Convention

Kenya supports the inclusion of commitments by Member States that will enhance accountability and effective implementation of the Framework Convention and its protocols. During the First Session, many Member States elaborated on the importance of commitments and proposed several key commitments that could be included in the Framework Convention.

Kenya proposes the inclusion of a commitment by Member States to **ensure that taxes are paid to the Governments of countries where economic activity occurs, value is created and from where revenues are generated**. This issue is reflected in Resolution 78/230 as a recognition by the General Assembly that there is a need for all countries to work together to eliminate tax evasion, tax base erosion and profit shifting.

Kenya also proposes the amendment of the proposed commitment on '*transparency*' to read '***Effective** transparency and exchange of information for tax purposes*'. Existing frameworks for exchange of information have not been fully effective, especially for developing countries, even where the required standards have been met.

3. Capacity Building

Kenya supports the efforts to build the capacity of Member States, especially developing countries, on relevant international tax policies and practices, as well as their capacity to effectively participate in the negotiation and implementation of the Framework Convention.

Capacity building should however not overshadow the main concerns of developing countries that will be addressed practically in the Framework Convention and its protocols.

4. Structural elements of the Framework Convention

Kenya supports the simplification of the Terms of Reference and the proposed structural elements of the Framework Convention. The proposed structural elements should also include a Coordinating Body and Technical Working Groups.

5. Specific priority areas to be addressed in early protocols

Kenya supports the development of early protocols on a small number of priority areas and that these protocols should be developed simultaneously with the negotiation of the Framework Convention.

Resolution 78/230 requested the Ad Hoc Committee to consider simultaneously developing early protocols while elaborating the Framework Convention on specific priority issues. This consideration was done during the First Session with wide support for the simultaneous development of early protocols and several proposals for priority issues to be addressed.

Given the proposed time frame below for the negotiation and conclusion of the early protocols, Kenya proposes that the early protocols should focus on the taxation of the digitalised and globalised economy and taxation of income derived from cross-border services as the priority issues.

6. Approaches and time frame for negotiation

Kenya supports the proposal to begin the negotiation of the early protocols at the same time as the negotiation of the Framework Convention, and to complete them no later than six months after the conclusion of the negotiation of the Framework Convention.

The early protocols are crucial in ensuring that the concerns raised by Member States regarding the current international tax framework in their written input and in the First Session will begin to be addressed practically.

Kenya also supports the inclusion of taking into consideration the work of other relevant forums as an approach to the development of the Framework Convention. This should be neither an objective nor a principle of the Framework Convention.

Resolution 78/230 emphasized that the tax-norm shaping process would leverage the existing strengths and address the gaps and weaknesses in the current international tax cooperation efforts. The negotiating committee should therefore have the flexibility to review the existing frameworks as one of the approaches to developing the Framework Convention without being unduly bound by them. Kenya also supports the formation of the negotiating committee as having one chair.

7. Resources to support the work of the negotiating body

Kenya supports the call to the Secretary-General to provide the intergovernmental negotiating committee with the necessary facilities and resources to support their work. The negotiating committee should be allocated with sufficient and dedicated secretariat staff to support the heavy workload that lies ahead. This will be crucial to the achievement of the objectives and time frame set out in the Terms of Reference, and to fulfilment of the goals of Resolution 78/230.