

Member State: Kingdom of Lesotho

Topic: Comments and Views on the “UN Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Date: 20 June 2024

(A) General Comments and Views

The Kingdom of Lesotho is grateful to have received the “Zero Draft Terms of Reference,” following its participation in the First Session of the Ad Hoc Committee. Lesotho further commends the Bureau for the efforts made to ensure that the Zero Draft is in place as per the First Session’s agreed timeframe. Overall, Lesotho is satisfied with the Zero Draft and views it as largely reflecting the agreed points and views during the meetings of the First Session. However, the following are specific comments and views on the various parts of the Zero Draft.

(B) Specific Comments and Views

- (i) **Paragraph 7 – opening statement and part (a) thereof** should be drafted in clear manner by the use of “**Establish**” which will also be consistent with the clear and precise language in paragraphs (b) and (c).
- (ii) **Paragraph 9 – bullet on transparency and accountability:** Lesotho views the inclusion of the phrase “**while respecting the rights to privacy and other fundamental human rights**” as risky and presenting high potential for abuse by

taxpayers and or member states. It is Lesotho's view that "**genuine taxpayers' rights**" should be respected and therefore the Framework on Tax should not go beyond that and address human rights that are otherwise already covered by appropriate legislations, thus, the inclusion has the potential to complicate matters for both taxpayers and revenue administrations. This phrase is not the language used in the standard tax treaties articles on "**exchange of information,**" it is only a suggested option by DTA model conventions commentaries that member states may adopt bilaterally. The removal of bank secrecy laws in many jurisdictions, as requirement for meeting the transparency standard, makes reference to human rights even look out of place in a Framework that deals with international tax issues.

- **new commitment** on where taxes are to be paid: Lesotho proposes that a new commitment should be inserted to the effect that "***taxes are to be paid where values is created and economic activity takes place, with special attention to exploration and exploitation of natural resources.***" Emphasis in relation to natural resources is meant to bring about fairness, especially to developing countries, whose natural resources have been enjoyed by the developed countries through unjust allocation of taxing rights, much to the detriment of developing countries. Re-allocation of such taxing rights would even be an ideal move to redress the historical wrongs.

- (iii) **Paragraph 10** – The list is reflective of the discussions and points of convergence during the meetings and as such all the bracketed issues are worth going into the list of substantive items and as such the brackets should be removed as they are no longer necessary.

- (iv) **Paragraphs 11 and 12 – on capacity building** - Lesotho feels that the UN should establish mechanisms, financial resources, and structure to ensure that capacity needs of Member States related to the Framework Convention are met.

The issue of capacity building should however not be prioritised over the real topical tax issues that should constitute the Framework Convention, it should only be viewed as an **‘enabler’** and not a revenue raising mechanism on its own. By definition, capacity building is not a tax handle, and therefore should not be taken to be a substantive item for domestic revenue mobilisation.

- (v) **Paragraph 13 – “data collection and analysis”** – Lesotho’s view is that there already exist sufficient reports, based on sound data and analysis, including the UN’s 2022 one, and all those reports provide rationale for putting in place the Framework. Any data collection and analysis work should be for purposes of informing future inclusion of items (either in the amended Framework or future protocols) that have so far not been part of the current debates. There is sufficient data and analysis that led to the need to develop and conclude the long overdue Framework Convention on International Tax Cooperation.

“subsidiary bodies” should include an **“advisory committee”** that will review much of the technical work on behalf of the Conference of Parties (CoP) which in turn will make informed political decisions, by virtue of their (CoP) positions. **“Technical working group”** should also be one of the subsidiary bodies. **The UN is to establish a fund out of which the work of these two bodies will be financed.**

- (vi) **Paragraph 14 – early protocols** – On review, and in particular paying attention to timeframes and limited resources, Lesotho submits that two early protocols should be considered, and this will mean merging the first proposed topics in the Zero Draft. The suggested protocols therefore become;

- Taxation of cross border services, digitised and global economy, and
- Taxation of tax related illicit financial flows.

- (vii) **Paragraph 15 – future protocol list** to include those dropped from paragraph 14 by Lesotho;
- Prevention and resolution of tax disputes, and
 - Taxation of high-net-worth individuals.
- (viii) **Paragraph 20** – work of other relevant forums – the draft indicates that the Drafting Committee **“should”** take into account work of other relevant forums. This formulation has the potential to deny the Drafting Committee the flexibility to finalise the work within the suggested timeframes as it might need more consultation to consult Member States who not been part of the process by design or otherwise. Furthermore, such usage subjects the entire process of the Framework Convention formulation subsidiary to existing work, which work has been proven not to be catering for the needs of all member states, in particular developing countries. The word **“MAY”** is therefore appropriate to allow for such flexibility and proper placement of the UN as the supreme organisation.

(C) Conclusion

The Kingdom of Lesotho looks forward to objective and constructive review and incorporation of these inputs. The journey so far indicates that that is a very realistic possibility.