



DESENVOLVIMENTO REVIEW

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Ministry of Justice must update Mozambicans on progress of the draft law on beneficial ownership

- The Government, through the Ministry of Justice, Constitutional and Religious Affairs, is working on a draft law to promote the transparency of beneficial ownership in the country. The initiative is welcome, but needs to be accelerated to bring Mozambique up to par with global standards of beneficial ownership transparency. The proposal should be informed by public debate before approval by the Council of Ministers and subsequent submission to Parliament.



1 Background

The outbreak of the COVID-19 pandemic has brought unprecedented challenges in the world's economic and social history. A growing number of poor and low-income countries are facing fiscal difficulties due to the burden of public debt repayment at a time of pressure to increase spending to protect the health and lives of their citizens.

New challenges are emerging and diminishing capacities for domestic revenue mobilisation, especially in developing countries. Some of the factors hindering domestic resource mobilisation are tax abuse¹ and illicit financial flows.

The State of Tax Justice 2020² reports that Mozambique loses up to USD 478 million in taxes a year to international tax abuses, about 15.36% of tax revenues collected, far above the 5.5% average of lower-income countries.

Another estimate is that of researchers Cotham and Janský³, of the United Nations University World Institute for Development Economics and Research (UN-WIDER). Using revenue information from the ICTD - WIDER Government Revenue Database and the methodology developed by International Monetary Fund (IMF) researchers - Ernesto Crivelli, Ruud De Mooij and Michael, the authors identified a revenue loss of

0.46 million through tax abuse activities by multinational corporations in 2013.

Corroborating these estimates, the International Consortium of Investigative Journalists (ICIJ, 2021) project called "Pandora Papers", based on documents from 14 financial services companies around the world, found links between nearly 1,000 companies in offshore havens, implicating some 35 world leaders and more than 300 public officials from 91 countries, including Mozambicans.

This evidence suggests that restricting even a small portion of these illicit financial flows would have a catalytic impact on the Government's ability to meet the needs of its most vulnerable population by collecting more taxes. The magnitude of the flows mentioned are of great concern given inadequate growth, high levels of poverty, resource needs and the changing global landscape of official development assistance.

Tax losses amount to approximately 2.6% of the country's Gross Domestic Product (GDP), one percentage point below the average of 2.7% for the SADC region. In the region, Mozambique ranks fifth among the economies with the highest tax losses in relation to GDP, after Namibia, Malawi, Seychelles and Lesotho.

2. beneficial ownership law could help Mozambique escape high tax burden

The transparency of the beneficial owner is increasingly receiving international attention. An attention that starts from the recognition of its role for fighting corruption and money laundering; improving the business environment (promoting open competition, including in public procurement and more efficient due diligence processes), fighting tax evasion, as well as in enhancing actions to fighting terrorist financing and locating and recovering stolen assets.

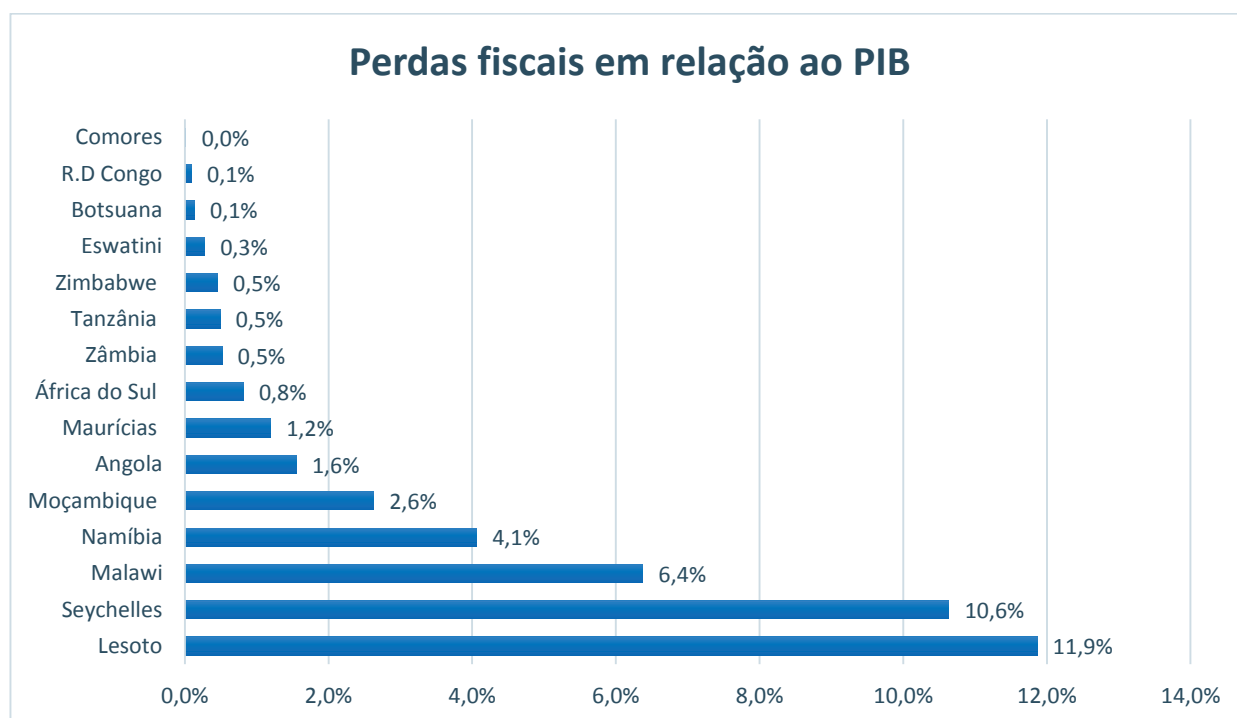
The G20, the Financial Action Task Force (FATF), the OECD and its Global Forum on Transparency and Exchange of Information for Tax Purposes, the Extractive Industry Transparency Initiative (EITI), the Open Government Partnership through its Beneficial Ownership Leadership Group and Transparency International are just a few examples of institutions and initiatives actively calling for the establishment of effective beneficiary registries at the global level.⁴

¹ The State of Tax Justice 2020: Tax Justice in the time of COVID-19, https://taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

³ Background paper for IGE FFD, 1st session (unctad.org), https://unctad.org/system/files/official-document/tdb_efd1_bp_CJ_en.pdf

⁴ <https://baselgovernance.org/blog/beneficial-ownership-transparency-pillar-anti-money-laundering-systems-so-it-needs-stand>

The graph illustrates a comparative analysis of tax loss-to-GDP ratios at the SADC level.



Source: Calculations based on estimates from the State of Tax Justice 2020.

Mozambique is not covered by the Tax Justice Network’s Financial Secrecy Index, which prevents a more objective assessment of the current stage of financial secrecy in general, as well as a specific focus on transparency around the real owners (beneficiaries) of companies.

However, as a member of the Extractive Industry Transparency Initiative, Mozambique has committed to transparency of beneficial ownership⁵. This commitment was reinforced after the International Monetary Fund established the creation of a beneficial owner law in Mozambique as a condition for accessing funds through the Fast Track Financing Facility.

As a result of a roadmap proposed in 2016⁶, the EITI Report⁷ of Mozambique 2019 requested the beneficial ownership of reporting companies, and most provided information on legal ownership, a process facilitated by the fact that many companies in the oil and gas sector are

listed on the stock exchange. However, coverage of the mining sector is still a challenge, including details on companies with exploration licenses, small-scale mining license holders, and companies bidding for licenses.

In general, Mozambique is committed to a central and public registry of the real owners of companies, but fails to cover the entire economy. Actual ownership of corporate vehicles remains unclear in our country⁸. There is a need to increase transparency for the final beneficiary of legal entities.

Mozambique underwent a FATF mutual evaluation in the middle of last year⁹. The results show that, although the Government collects data on legal entities, they reveal basic information on shareholders. Secondly, this information is neither systematised, nor updated or checked for accuracy. Mozambique does not currently collect information from the B.O. (the Penitentiary Establishment of Maximum Security) and

⁵ OpenOwnership (2021), <https://www.openownership.org/map/#map>.

⁶ Mozambique Beneficial Ownership roadmap (2016), https://eiti.org/files/documents/mozambique_beneficial_ownership_roadmap.pdf

⁷ Relatório da ITIE Moçambique (2019), https://www.mireme.gov.mz/index.php?option=com_phocadownload&view=category&download=67:9-relatorio-da-itie-mocambique-ano-de-2019&id=20:8-relatorio-da-itie-mocambique-anos-de-2017-e-2018&Itemid=150

⁸ Relatório de Risco e Conformidade (2018), http://www.knowyourcountry.info/files/mozambiqueamlaug14_4.pdf

⁹ <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-Mutual-Evaluation-Mozambique-June%202021.pdf>

cannot exchange this information with any other country.

In addition, it is important to note that the only law that provides for due diligence and a way to collect information to identify owners is the Law to Prevent and Combat Money Laundering and Terrorist Financing. However, this law is outda-

ted and not in line with current global standards.

Mozambique does not comply with FATF recommendations on beneficial ownership. This is even more critical considering that non-compliant countries usually lose access to the international financial system, which would be very detrimental to Mozambique.

3. Government to start implementing reforms while developing the necessary legal tools to implement transparency of the beneficial owner

The Government, through the Ministry of Justice, Constitutional and Religious Affairs, is working on a draft law to promote beneficial ownership transparency in the country. The initiative is welcome, but needs to be accelerated to bring Mozambique up to par with global standards of beneficial ownership transparency. The proposal should be informed by public debate prior to its approval by the Council of Ministers and subsequent submission to Parliament.

Even as the Government is developing the necessary legal tools to implement transparency of beneficial ownership, there is room for sectoral reforms in phases. Therefore, the Government should, firstly, require all companies involved in procurement with a public company to provide information on beneficial ownership.

Second, the Government should collect beneficial ownership data from all companies seeking mining concessions in line with best international standards.

Lastly, the Government should improve and streamline the asset declaration process by civil servants. This will facilitate the cross-checking of data to responsible institutions such as the Revenue Authority (AT), the Central Anti-Corruption Office (GCCC) and the Mozambique Financial Intelligence Office.

In developing the draft law, the Ministry of Justice, Constitutional and Religious Affairs shall:

1. Provide for thresholds to identify the actual beneficiary. A lower limit of around 10% participation would be more ideal than an upper limit;

2. Include in the proposal a requirement that all companies provide beneficial ownership data within six (6) months of the passage of the law;
3. Require all foreign companies registered in Mozambique to provide details of a local contact person for the purpose of identifying the beneficial owner;
4. Prohibit the issuance and use of bearer shares and immobilize any existing bearer shares;
5. Include in the proposal a requirement that insurance companies collect beneficial ownership information for their clients;
6. Provide a framework for the collection of beneficial data for real estate companies and agents;
7. Provide for sanctions for non-compliance with the law, especially for financial institutions and DNFBs;
8. Provide a framework for public access to beneficial ownership information;

The Government should also consult with stakeholders, including civil society and the private sector. The approval of an effective benefit bill will put Mozambique on the global map as an emerging economy that is progressively responding to growing needs and promoting domestic resource mobilization efforts.



EDITORIAL INFORMATION

Property: CDD – Centro para Democracia e Desenvolvimento
Director: Prof. Adriano Nuvunga
Editor: Emídio Beula
Authors: Dimas Sinoa (CDD) e Francis Kairu (TJNA)
Team: Emídio Beula, Dimas Sinoa, Américo Maluana
Layout: CDD

Address:
 Rua de Dar-Es-Salaam Nº 279, Bairro da Sommerschild, Cidade de Maputo.
 Telefone: +258 21 085 797

Twitter: CDD_moz
E-mail: info@cddmoz.org
Website: http://www.cddmoz.org

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