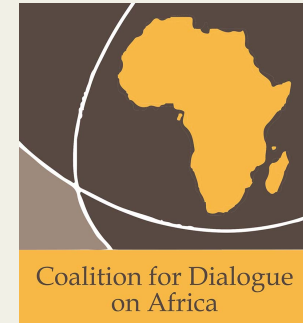




First African Fiscal Policy Forum Inequalities in Taxing Rights 16 December 2021



Towards a Fairer International Tax Regime

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Ten Years of Attempts to Reform International Tax

■ Base Erosion & Profit Shifting (BEPS) Project

OECD 2012 > G7 > G20 2013

First package of reports 2015:

patch-up of existing rules, no proposals on Action 1 Digitalisation

Country-by-Country Reports: to MNE Home Country, restricted access, not public

Inclusive Framework 2016: open to all states accepting commitments

Addressing Tax Challenges of Digitalisation 2018 report

G24 proposals December 2019

■ National Measures

Digital Services Taxes: **India** (EL), **France** + others -- **US** trade countermeasures

US reforms 2016: GILTI & BEAT

UK : Diverted Profits Tax, **Australia**: Combating Multinational Tax Avoidance

India & Nigeria: taxable nexus for Significant Economic Presence

■ UN Tax Committee

Article 12A: Withholding tax on Fees for Technical Services (& option for all services) 2017

Article 12B: WT + net tax option on income from Automated Digital Services 2021

BEPS Phase 2

➤ Pillar 1

c.100 largest & most profitable MNEs (excluding finance & extractives)

>€20b turnover + 10% global profit rate + in-country sales €1m (€0.25m if < €40b GDP)

Allocates 25% of profits >10% to countries by sales revenue

Existing “Arm’s Length” rules continue for rest of profits & for **all other MNEs**

MNE’s self-assessment return submitted to Home country, verified by Panel (if required)

Mandatory binding dispute resolution for Amount A and related issues (elective for some LICs)

removal of DSTs & ‘other similar measures’ (online sales? mobile money?)

➤ Pillar 2:

GLOBE: MNEs >€750m revenues

top-up tax on profits with effective tax rate (ETR) <15% by jurisdiction

taxable profits = accounting rules (deduction of e.g. R&D acquisition costs?)

‘carve-out’ (8% assets 10% payroll declining to 5% over 10 years)

priority to MNE Home/intermediary country (IIR), Host country tax (UTPR) only as back-up

STTR: new Withholding Tax on payments taxed <9% ETR, to **maximum of 9%** on the payment

on interest, royalties & ‘defined set of ‘other payments’ (services? unlikely for digitalised)

(existing treaty WTs on interest/royalties usually 10-15%)

➤ Implementation

Pillar 1: Multilateral Convention + model rules for domestic law

ratification by critical mass of countries by 2023. **USA?**

Pillar 2: GLOBE: model rules + implementation framework

STTR: model treaty provision + coordinated process for implementation (MLI)

commitment by IF members with CIT rate <9% to implement in treaties with LICs on request

Package = political commitment, not a single binding international agreement

Options for African Countries

- **Participation in the Package**

 - Pillar 1: cost/benefits of Amount A (including withdrawal of DSTs)

 - Pillar 2: GLOBE: is UTPR improvement on alternative base protection measures?

 - STTR: scope (seems limited) & rate (seems low)

- **Strengthen Tax on Non-Resident Companies**

 - Home countries' application of 15% ETR removes investment disincentive

 - (in any case tax exemptions for non-residents are **disincentive** to local presence)

 - Withholding taxes on (gross) payments

 - Net Profit taxation: SEP + formulaic allocation of profits (India, Nigeria)

 - Should cover **all services**, not only digitalised

 - Alternative Minimum Tax

- **Review existing tax treaties**

 - Minimum standard: power to tax all income derived from activities performed in country

 - Services: single broad article (Commentary to UN model 12A), or

 - UN model 12A + 12B (includes net income option)

The Institutional Architecture

- **Institutional Imbalance & Fragmentation**
Only political accountability of Inclusive Framework is to G7/OECD/G20
Lack of coordination between UNCTC, WB, IMF & OECD/IF
- **A Framework Convention on Tax Cooperation (FCTC)**
similar to Framework Convention on Climate Change (FCCC)
Broad obligations on Tax Cooperation
 - mutual administrative assistance in tax assessment & collection
 - aim to tax activities where they take placeInstitutional Framework
 - COP: high political level
 - specialised technical bodiesUmbrella for existing (& new) Conventions and Standards
 - e.g. MCMAA & MLI, now hosted by OECDSubsume existing global bodies
 - UN Committee of Experts
 - Global Forum on Tax Transparency & Exchange of Information
 - Inclusive Framework
- Further details: Chowdhary & Picciotto South Centre Policy Brief 21, November 2021
<https://www.southcentre.int/tax-cooperation-policy-brief-21-november-2021/>

Many Thanks!

<https://www.bepsmonitoringgroup.org/>