

**STATEMENT BY MRS. (DR.) ZAINAB SHAMSUNA AHMED,
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PLANNING, FEDERAL REPUBLIC OF NIGERIA AT A VIRTUAL
MEETING ORGANIZED BY COALITION FOR DIALOGUE ON AFRICA
(CODA) AND THE SOUTH CENTER ON THE TWO PILLAR SOLUTION
OF THE OECD INCLUSIVE FRAMEWORK (IF) ON THE 16TH of
DECEMBER, 2021.**

It is indeed an honour and a privilege for me to receive this invitation to make a statement at this meeting on Nigeria's position on the Two Pillar solution of the OECD Inclusive Framework.

2. The OECD/G20 Inclusive Framework (IF) on BEPS, on 8th October 2021, finalized its "Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy". The new tax rules under the project are expected to come into effect in 2023.

3. Nigeria actively participated in the discussions leading to the final statement. However, we are unable to sign up to the Framework because it falls short of Nigeria's legitimate expectation regarding fair re-allocation of Multinational Enterprises (MNEs) profit to market jurisdictions.

4. Nigeria participated in the discussions based on the expectation that the solution agreed would be fair to all members of the Inclusive Framework. As such, we committed enormous resources to participate in the discussions leading up to the deal. All Nigeria's

concerns were clearly articulated and communicated at every stage of the discussion, but most of these were, unfortunately, ignored.

Nigeria's specific stand include:

- i. **Scope Threshold:** The scope threshold of pillar 1, which covers MNEs with 20 billion Euros global revenue with above 10% profitability is calculated using an averaging mechanism. This parameter keeps just about 100 companies within the scope of the rules, out of which less than half are of interest to Nigeria. Most of the well-known MNEs deriving profits from Nigeria remotely, and covered under our existing Significant Economic Presence rule, are out of scope of the rule.
- ii. **Nexus Threshold:** In order for a jurisdiction to qualify for a share of "Amount A" of an MNE, that MNE must have recorded in-country revenue of, at least 1 million EURs, if the jurisdiction's GDP is 40 billion EURs, the in-country nexus threshold is 250,000 EURs. Nigeria's GDP is greater than 40 billion EURs; as such, an MNE must generate revenue of 1million EURs from Nigeria in order for the country to have a share of the MNE's "Amount A".
- iii. **Mandatory Binding Dispute Resolution:** The proposed measures include a mandatory binding dispute resolution mechanism for Amount A and issues connected to it (including all Transfer pricing and business profits disputes).

The elective option built into rules for developing economies is short-term and will soon lapse. Meanwhile, tax revenue disputes are not arbitrable and are under the exclusive jurisdiction of the Federal High Court in the 1999 Constitution of the Federal Republic of Nigeria. Besides, the cost associated with international arbitration and unreasonableness of past arbitral awards will put government revenues at risk.

- iv. Unilateral Measures: The rules require participating jurisdiction to remove all unilateral measures on all companies, including those that are not in scope of Amount A. The proposed definition of unilateral measures goes beyond digital service companies. As such, it means that Nigeria will be unable to collect tax from many companies that are carrying out business in Nigeria via remote channels. Initial analysis of pillar 1 suggests that Nigeria will likely experience negative net revenue outcome. This is because, while the new “Amount A” taxing right will deliver some revenue for Nigeria, some existing taxing right may be lost through the withdrawal and standstill of the so called “unilateral measures”, which go beyond digital service tax. As such, the revenue to be given up may outweigh the additional revenue receivable from “Amount A” taxing right.

5. Finally, tax is a sovereignty issue, and the sovereignty of national taxation should always be asserted. In view of the concerns

raised above, Nigeria is presently unable to join the deal, which does not represent a consensus of the Inclusive Framework. The failure of multilateralism in achieving a fair and equitable global tax solution leaves us with no choice but to seek unilateral measures to address the emerging global tax challenges by exploring possibilities of developing local solutions that work, either within our domestic tax rules, or along the regional blocs.

6. However, Nigeria as an Inclusive Framework member, will continue its participation in the development of the detailed implementation rules.

7. This is Nigeria's present position given the state of the current discussions. I thank you for your attention.

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16th December, 2021