



REGIONAL TAX POLICY DIALOGUE ON DOUBLE TAXATION TREATIES AND TAX INCENTIVES IN ECOWAS COUNTRIES

CONCEPT NOTE

Background

The drive to attract Foreign Direct Investments (FDI) and promote international trade has been top on the agenda for many developing countries. This has called for many countries to put in place policies that are geared to make them remain competitive and attractive for FDIs.

Specifically, the Extractive sector in West Africa has been of focus following the fact that most economies in the region rely on commodities to generate revenues for financing development. This has seen governments putting in place policies that are aimed at increasing investments towards that sector. The investment model adopted by players in this sector have been questionable in view of the [oligopolistic¹](#) market in which they operate.

Characterised by dominance of few firms, oligopoly markets offer an opportunity for the players/firms to influence the policies and systems put in place to govern their operation. This is often possible as a result of the high probabilities of the players colluding or creating [cartels](#). This has been demonstrated to the extent that some firms have been engaged as advisors in the development of legal frameworks that are meant to govern their operations, subsequently, subjecting the whole process to a bias.

In line with recent developments, Double Tax Agreements (DTAs) and tax incentives have been identified and popularly used as the quick and easy policy tools for attracting in FDIs and promoting international trade. Following this move, it has been estimated that Sub Saharan Africa alone has at least 300 double tax agreements in force (Hearson, 2015). Furthermore, many countries have given unprecedented tax incentives like creation of Export Processing Zones, Special Economic Zones and Industrial Parks

¹[Market Structure](#) in which a few firms dominate.

with a view to attract investments and promote export-oriented industries. Considering the interest that the extractive sector has raised, a number of tax agreements and incentives have been developed with the intent of spurring investment in this sector.

The issue of tax agreements and tax incentives have been subjects of interest as a result of the rising degree of globalisation which has brought about competition between the various economies especially in raising of domestic revenues and the findings from the [High Level Panel Report on illicit Financial Flows](#) which projects them as key enablers of illicit Financial Flows (IFFs).

Tax Justice Network Africa (TJNA) and other like-minded organisations have been at the forefront of demystifying the need for fair and just tax systems with a focus on DTAs and Tax incentives. On the signing of DTAs, the key question for determination has been whether DTAs are necessary in the attraction of FDIs and whether developing countries are getting their best bargains on the DTAs they sign with developed countries in terms of safeguarding their tax base. To answer these questions, TJNA and other organisations have carried out a number of researches including:

1. [Tax treaties in Sub-Saharan Africa- Critical Review](#), :This called for a review of the existing tax treaties and also the need to assess the tax revenue forgone as a result of signing DTAs among other recommendations;
2. [Tax Drainage-Kenya/Mauritius DTA and its potential impact on tax base erosion in Kenya](#) : this focused on the potential of tax base erosion through a review of the Kenya – Mauritius DTA. The findings and conclusions from this review provided a basis for TJNA to institute a [legal case at the high court](#) against the government regarding the implementation of the Kenya – Mauritius DTA.

To champion for the need of fairness in the award of tax incentives, TJNA working closely with other partners carried a number of researches like [Tax Competition In East Africa-; A Race To The bottom](#), [The West African Giveaway: Use & Abuse of Corporate Tax Incentives in ECOWAS](#) and [Still Racing to the Bottom?-Corporate tax incentives in East Africa](#) with the key objective of reviewing the tax incentives schemes that have been put in place by various countries and their effect on foreign direct investment and domestic resource mobilisation.

Additionally, TJNA has carried out a review of the Africa Mining Vision (AMV) with a view of establishing the extent to which it has been embraced or domesticated at the national level. The Synthesis Report- [“WHERE IS THE MONEY?”](#) which was developed on basis of country specific reports from Tanzania, Zambia and Ghana. The report pointed that these countries have signed bilateral/multilateral Investment Treaties and Double Taxation Agreements with other countries to promote investment in the extractive sector, however, these tools have been subject of abuse by the various investors. Further, the report shows that three countries selected faced the challenge of developing systems for assessing the extent of tax

leakages, losses, tax avoidance and evasion, which have contributed to the menace illicit financial flows.

Among the tax challenges that face the extractive sector are the issues of transfer pricing, lack of beneficial ownership disclosures, unnecessary tax incentives, taxation of transfer of extractive rights among other sectors. In an attempt to addressing these challenges United Nations (UN) has developed a [transfer pricing manual](#) which provides step by step guidelines towards entrenching transfer pricing in the extractive sector. Further, there have been calls for governments to be careful in the designing of [tax incentives](#) to ensure that they are effective and efficient.

Rationale

In line with recommendations made from the various studies on DTAs and tax incentives, countries have made some efforts to address concerns raised. Some countries are developing DTA policies, renegotiating harmful tax agreements, signing on to BEPS Multilateral Instruments (MLI) and reviewing of tax legislations to remove some of the harmful incentives. The establishment of West Africa Tax Administration Forum (WATAF) to offer support in tax administration in West Africa presents some hope towards harmonised tax policies.

Nevertheless, with the growing tax treaty network², increasing calls for renegotiations of a number of existing treaties in the world, desire to facilitate automatic exchange of information and the recent adoption of [Multilateral Instrument](#) on tax treaties by some countries, the efficiency and effectiveness of pursuing tax treaties and tax incentives as fiscal policies instruments in Africa has been a concern.

Moreover, extractive sector has been dominated by few players across the region. With the intent to retain them and encourage the exploration process, the governments have signed, conceded to bilateral agreements which are either discriminatory or unwarranted.

Based on the forgoing and the continued need to domestically raise revenue to finance development, increased calls to adopt and domesticate the AMV as the tool for economic transformation in the extractive sector and the recent development of the [Africa Mining Governance Framework](#), there is a need for discussion around the taxation policies that have been put in place. It is based on the identified need that we seek to bring together stakeholder

²[Kenya & UAE Double Tax Agreement Ratified, Ghana signs Double Taxation Agreement with Mauritius, Nigeria signs double taxation agreement with Singapore](#)

across the policy spectrum with a focus on how we can make extractive sector work for the people.

Objectives of the meeting

- Develop joint policy positions on double tax agreements and tax incentives that will be used for future advocacy,
- Strategize on the legislative process that should be put in place at both national and regional level in order to ensure efficient and effective DTAs and tax incentives regimes,
- Identify opportunities and spaces to contribute to the ongoing reforms on tax agreement negotiations and tax incentive regimes.

Expected participants

The dialogue will target stakeholders including members of Parliament, academicians, policy makers, revenue authorities, extractive experts, civil societies among other players from at least five countries in the Economic Community of West African States (ECOWAS).

Expected Outcomes

- Well-developed joint policy document detailing our position on double tax agreements and tax incentives that will be used for future advocacy
- Strategy detailing the legislative process that should be adopted in negotiating for effective and efficient tax agreements and tax incentives in place.
- Identification of opportunities and spaces through which our input can be incorporated in the ongoing reforms on tax agreement and tax incentives.

Date and Venue

- Tax Justice Network Africa (TJNA), in partnership with Oxfam West Africa and Friedrich Ebert Stiftung (FES) AU Cooperation office, will host the dialogue in Dakar, Senegal from 28-30 November 2018.