



REGIONAL POLICY TAX POLICY DIALOGUE ON DOUBLE TAXATION TREATIES AND TAX INCENTIVES IN EAC 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 the East Africa has been of focus following the recent discovery of oil and gas deposits in Tanzania, Uganda and Kenya. This has meant the putting in place policies that are geared towards increasing investments towards that sector. The investment model adopted by players in this sector have been questionable considering the [oligopolistic¹](#) market in which they operate.

Characterised by dominance of few firms, offer an opportunity for the players 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 to use in promoting FDIs and international trade. Following this move, it has been estimated that Sub Saharan Africa alone has at least 300 double tax agreements in force which majority of those have been signed with European countries (Hearson, 2015). Further many countries have given unprecedented tax incentives like creation of Export Processing Zones, Special Economic Zones and Industrial Parks with a view to attract investments and promote such countries exports. Considering the interest

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

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

1. [Tax treaties in Sub-Saharan Africa- Critical Review](#), which 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 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.

Further, 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. From the report it was evident that countries have signed a number of Bilateral Investment Treaties and Double Taxation Agreements with other countries in order to promote investment in the extractive sector, however, these tools have been subject of abuse by the various investors. Further, the report points that three countries selected face the challenge of developing systems for evaluating the components to assess 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 links to issues of transfer pricing, lack of beneficial ownership disclosures, unnecessary tax incentives, taxation of transfer of extractive rights among other sectors. In addressing these challenges United Nations (UN) has developed a [transfer pricing manual](#) which is geared towards providing step by step guidelines towards entrenching transfer pricing in the extractive sector. Further, there has 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 studies on DTAs and tax incentives, countries have made some efforts to address concerns raised. Some countries are developing DTA policies, renegotiation of harmful tax agreements, suspension of any tax agreement negotiations like in the case of Uganda² and review of tax legislations to remove some of the harmful incentives. For instance, Kenya and Tanzania reviewed their Value Added Tax Act to eliminate the huge and unnecessary exemptions that were in the old legislations. Further, Africa Tax Administration Forum (ATAF) has developed a [DTA Model](#) that is poised to propose a universal DTA negotiation tool for Africa countries.

Nevertheless, with the growing tax treaty network³, increasing calls for renegotiations of a number of existing treaties in the world and the recent adoption of [Multilateral Instrument](#) on tax treaties, the efficiency and effectiveness of pursuing tax treaties and tax incentives as fiscal policies instruments in Africa has been a concern.

Moreover, with an upcoming extractive sector dominated by few players across the East Africa region, there are concerns on the nature of tax agreements that governments are signing with these players. Equally with the intent to retain them and encourage the exploration process, the governments have signed conceded to bilaterally agreed tax incentive which are either discriminatory or unwarranted.

Based on the forgoing and the continued need to domestically raise revenue to finance development, the adoption of 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 policy discussion that will bring together stakeholders from East to engage on tax agreements

² [Uganda government suspends Double Taxation pacts](#)

³ [Kenya & UAE Double Tax Agreement Ratified, Ghana signs Double Taxation Agreement with Mauritius, Nigeria signs double taxation agreement with Singapore](#)

and the tax incentive regimes that should help realise the potential of having the extractive sector working for the people of Africa.

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 put in place at both national and regional level towards putting in place efficient and effective DTAs and tax incentives,
- Identify opportunities and spaces to inform the ongoing reforms on tax agreement negotiations and tax incentive regimes.

Expected participants

The dialogue will target stakeholders including academicians, policy makers, revenue authorities, extractive experts, civil societies among other players from EAC Countries (Burundi, Uganda, Rwanda, Kenya, Tanzania and South Sudan). The dialogue will also involve East Africa Legislative Assembly and EAC Secretariat representatives.

Expected Outcomes

- Deepened understanding on the dangers of haphazard tax agreements and incentives targeted at the extractive sector extended by government to financing development.
- Strategy on the legislative process that should be adopted in negotiating for effective and efficient tax agreements and tax incentives.
- Identification of the available 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 (TJN-A), in partnership with Friedrich Ebert Stiftung (FES) AU Cooperation office, will host the dialogue at **Harbour View Hotel, Dar-es-Salaam, Tanzania** from 12 – 13th of June 2018.

Budget

Friedrich Ebert Stiftung will be responsible for all expenses related to the dialogue (Accommodation, flight tickets, visa reimbursement, airport transfer and conference package).