



BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

Raising Tax Certainty Virtual Seminar

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BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

Practices and Measures by African Countries for improving Tax Certainty

Mr. Logan Wort
Executive Secretary
African Tax Administration Forum



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BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

Introduction:

- One of ATAF's strategic objectives is building efficient and effective tax systems in Africa with a view to bolstering **domestic resource mobilization (DRM)** to support the achievement of sustainable development goals.
- Tax certainty is an essential aspect of this as it provides taxpayers with the much-needed **predictability** and **stability** of tax laws, regulations, and administrative practices. This has profound implications on levels of **foreign direct investment** and the overall **economic development** of a country. Further, it provides the foundation for **voluntary compliance**.
- These considerations inform our tax policy work on the continent by carefully balancing the need of having robust and equitable tax legislation and ensuring those measures promote **tax certainty**.



Part 01

Practices by African Countries for improving Tax Certainty



1. Adoption of relevant international standards on cross border transactions:

- Tax policy and legislation in respect of cross border transactions requires some alignment with **international standards** and the adoption of **international cooperation mechanisms** on aspects such as avoidance of **double taxation** and **exchange of information**. When implemented, these aspects promote tax certainty as taxpayers' view this as implementation of consistent, well known and predictable measures and practices.
- ATAF has developed several products referred to as Suggested Approaches that are largely legislation drafting models or guidelines that countries may rely on in drafting their own domestic law.
- One of the critical suggested approaches is the **ATAF Suggested Approach to Drafting Transfer Pricing Legislation**. This Suggested Approach promotes the application of the arm's length principle but with the necessary adaptations to suit African realities. We have extensively promoted this Suggested Approach through our technical assistance programme and these efforts have led to **22 transfer pricing and international tax legislations** in Africa being modelled around this Suggested Approach



1. Adoption of relevant international standards on cross border transactions:

- With regards to digital taxation, many African countries have been contemplating or have already implemented, measures to tax digital firms both from the perspective of income tax and VAT.
- To support African countries in the design of such measures, ATAF has developed a **Suggested Approach to Drafting Digital Services Legislation** as well as a toolkit on VAT on Cross Border Digital Supplies – **the VAT Digital Toolkit for Africa**. The Suggested Approach and the Toolkit promote tax certainty as they are adapted from measures that have been adopted in many other parts of the world.
- Further, we also support the implementation of these measures through the **Simplified Registration Regime**. Through our technical assistance, several African countries have implemented these measures including the adoption of the Simplified Registration Regime for both VAT on cross border digital supplies as well as Digital Service Tax (DST). These countries include **Kenya, Tanzania, Ghana, Nigeria, Uganda and Zambia**.



2. Practices on Dispute Prevention and Resolution

- Practices and measures around dispute prevention and resolution significantly contribute towards tax certainty. Dispute prevention measures such as **Advance Pricing Agreements (APA)**, **Cooperative Tax Compliance Regimes** and **Advance Tax Rulings** have been adopted in several jurisdictions. ATAF considers these measures as relevant for African countries but with due consideration of their realities such as the level of tax morale and compliance behavior of taxpayers.
- There is limited adoption and implementation of APA in Africa. Some of the countries that have active APA regimes include **Nigeria, Uganda and Botswana**. However, recently we have observed several African countries considering the introduction of APA regime with some countries enacting the necessary primary legislation on APA or advance tax rulings. For this reason, ATAF is in the process of developing a **Suggested Approach to Drafting Advance Pricing Agreement Regulations** to assist those countries that would like to implement such measures.



2. Practices on Dispute Prevention and Resolution cont.

- Dispute resolution is important for tax certainty. Many African countries have the necessary dispute resolution structures including **Objection Review Units/Panels**, **Tax Tribunals** and **Courts**. Additionally, for cross border tax disputes, countries have the option of using **Mutual Agreement Procedures (MAP)** under existing Double Taxation Agreements. However, there are limited MAP cases involving African countries; but these are likely to increase as transfer pricing and international tax audits increase.
- We have also observed the adoption of **Alternative Dispute Resolution (ADR)** mechanisms by some countries such as Kenya and South Africa. ADR is a mediation or arbitration process within a tax administration which taxpayers can utilise to resolve their tax disputes instead of pursuing the lengthy and often expensive litigation process. Our members have reported to us that taxpayers are increasingly using ADR in respect of their transfer pricing and international tax disputes.



3. Implementation of Amount B

- The OECD Inclusive Framework (IF) on Base Erosion and Profit Shifting, last month published the **Amount B Guidance** which will be included in the Transfer Pricing Guidelines. One of the fundamental policy objectives of Amount B is to provide tax certainty on the application of transfer pricing rules in respect of the so-called *baseline and marketing distribution activities*.
- Many of our members have reported to us that they consider Amount B as critical because distribution arrangements are significant and often lead to transfer pricing disputes. These disputes often relate to the characterization of the distributor as well as on the selection of appropriate comparables considering that there are no local comparables in Africa.
- ATAF will be supporting its members to implement Amount B in order to address the above transfer pricing issues as well as to provide the much-needed tax certainty to businesses investing in these activities in Africa.



4. Automation and Digitalization of Tax Administrations

- Automation and digitalization of tax administrations also contributes towards tax certainty as it supports taxpayers to comply with tax laws in a cost-effective manner by amongst other things: reducing the time of filing and payment of taxes as well as the swift provision of useful information to taxpayers.
- Several African tax administrations have automated their tax systems including adoption of modern technologies to support pre-populated tax returns and to support VAT compliance. However, more still needs to be done and ATAF is undertaking several projects with a view to supporting African countries to achieve this goal.



5. Risk driven compliance measures and audits

- In addition to **automation** and **digitalisation** of tax administration, African tax administrations are working towards the **development of risk assessment models** including leveraging modern technologies such as **data mining** and **data analytics** to ensure that compliance interventions are informed by tax risks.
- This translates to efficiencies in utilizing scarce resources as well as ensuring that compliance interventions and tax audits are targeted at high-risk taxpayers. This provides tax certainty to tax compliant taxpayers enabling them to focus their efforts on the growth and expansion of their business as opposed to tax matters under circumstances where no or very limited tax risk is at play.



Part 02

ATAF Work & Tax Certainty



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Capacity Building

- ⑩ ATAF has been intensively engaged in capacity building programmes which focus on international tax, transfer pricing and a range of domestic tax issues such as Value Added Tax, Property Tax, taxation of informal sector, the development of audit skills in specialized sectors such as extractives, telecommunication and insurance.
- ⑩ Our capacity building programme has trained over **6,459 tax** officials in over **38 countries** within the continent.

Direct Audit Assistance

- ⑩ ATAF increasingly provides direct audit assistance particularly in transfer pricing and international tax based on country needs.
- ⑩ This assistance has not only led to collection of significant tax revenues (**about USD 1.725 billion**) but has also transferred the *necessary audit skills to tax officials* which significantly contributes towards tax certainty in the recipient country.



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Conclusion:

- African economies were significantly decimated by the Covid 19 Pandemic and the situation has been exacerbated by the ongoing geo-political conflicts leading to substantial debt crisis and increased poverty. Therefore, countries are aggressively putting in place tax policy and administrative measures that enhance domestic resources mobilization.
- We continue to provide the necessary technical assistance for the achievement of this objective with the ultimate goal of improving the livelihood of the people of this continent.
- Whilst we acknowledge and strongly encourage measures that promote tax certainty, we equally call upon businesses and foreign investors to comply with the existing tax laws and to work with organizations such as **ATAF** and **BRITACOM** to ensure robust and equitable tax policies are implemented for the social-economic development of the continent.



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THANKS

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