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BERLIN · GERMANY

Developing countries, their policies and their experience in regard to the OECD BEPS process

Chair: Miranda Stewart

Date: 7th of September 2022

Panel members

Chair: **Professor Miranda Stewart**, University of Melbourne; Vice-Chair, Permanent Scientific Committee of IFA (Australia)

Ms Melani Astuti, International Tax Analyst, Ministry of Finance (Indonesia)

Dr Martin Hearson, Research Director, International Centre for Tax and Development (UK)

Mr Michael Lennard, Chief, International Tax Cooperation Section, Financing for Sustainable Development Office (UN)

Professor Annet Oguttu, University of Pretoria; Member, FACTI Panel (South Africa)

Ms Lolade Ososami, Partner and Head of Tax, Udo Udoma & Belo-Osagie (Nigeria)

Mr Juan David Velasco, Partner, Baker McKenzie (Colombia)

Secretary: **Mr Prasanna Nidumolu**, Jones Day (Australia)

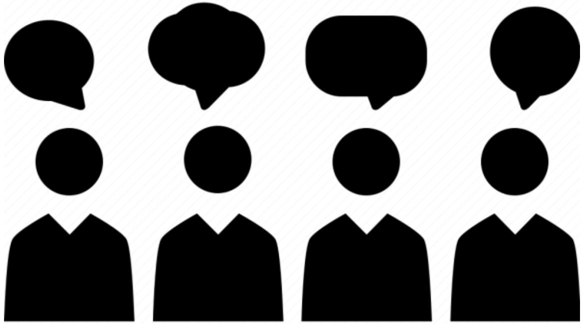
Developing countries, their policies and their experience in regard to the OECD BEPS process

1. State of play on BEPS 1.0 for developing countries
2. BEPS Actions implementation examples and challenges
3. The Inclusive Framework and who is making the law
4. Some country examples and structures
5. State of play on BEPS 2.0
6. At the table, off the menu?
7. Pillar One and Pillar Two
8. Concluding comments

MS

The state of play on BEPS for developing countries

<u>Poll</u>: *Is the BEPS Action Plan good for developing countries?*



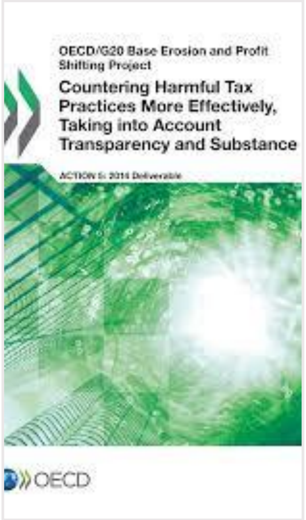
Go to your IFA App to respond to the Poll!

Key BEPS 1.0 Measures for African Countries

- UN, questionnaire on priority BEPS concerns in developing countries - 2014
- G20 Development Working Group, DRM in developing countries - 2014
  - Action 4: Limit base erosion via interest deductions and other financial payments
  - Action 6: Prevent treaty abuse
  - Action 7: Prevent the artificial avoidance of PE status
  - Action 10: Assure that transfer pricing outcomes are in line with value creation
  - Action 13: Re-examine transfer pricing documentation

AO

BEPS Implementation Highlights – NIGERIA
Minimum Standards



LO

BEPS implementation in LATAM

Action	IMPLEMENTATION									
	Colombia	Chile	Mexico	Costa Rica	Peru	Brazil	Argentina	Bolivia	Ecuador	Venezuela
	OECD member				To be OECD member country			Non OECD member		
1	X (orange)	X (orange)	X (orange)	X (orange)	X (red)	X (red)	X (orange)	X (red)	X (orange)	X (red)
2	X (red)	X (orange)	X (orange)	X (orange)	X (red)	X (red)	X (red)	X (red)	X (red)	X (red)
3	X (green)	X (green)	X (green)	X (red)	X (red)	X (red)	X (green)	X (red)	X (red)	X (red)
4	X (orange)	X (red)	X (orange)	X (orange)	X (orange)	X (red)	X (green)	X (red)	X (green)	X (red)
5	X (orange)	X (green)	X (green)	X (green)	X (orange)	X (orange)	X (green)	X (red)	X (orange)	X (red)
6	X (green)	X (orange)	X (green)	X (orange)	X (red)	X (orange)	X (green)	X (red)	X (orange)	X (red)
7	X (orange)	X (orange)	X (green)	X (orange)	X (red)	X (green)	X (green)	X (red)	X (red)	X (red)
8	X (red)	X (red)	X (orange)	X (green)	X (red)	X (red)	X (green)	X (red)	X (green)	X (red)
9	X (red)	X (red)	X (green)	X (green)	X (red)	X (red)	X (green)	X (red)	X (green)	X (red)
10	X (orange)	X (red)	X (orange)	X (green)	X (orange)	X (red)	X (green)	X (red)	X (green)	X (red)
11	X (red)	X (orange)	X (orange)	X (orange)	X (red)	X (red)	X (orange)	X (red)	X (red)	X (red)
12	X (red)	X (orange)	X (green)	X (red)	X (red)	X (orange)	X (green)	X (red)	X (orange)	X (red)
13	X (green)	X (green)	X (green)	X (green)	X (green)	X (orange)	X (green)	X (red)	X (red)	X (red)
14	X (orange)	X (orange)	X (orange)	X (orange)	X (red)	X (orange)	X (orange)	X (red)	X (red)	X (red)
15	X (green)	X (green)	X (green)	X (green)	X (green)	X (red)	X (green)	X (red)	X (red)	X (red)

X action fully adopted (green) **X action partially adopted** (orange) **X action implementation under review** (red)

Key BEPS Actions for LATAM countries

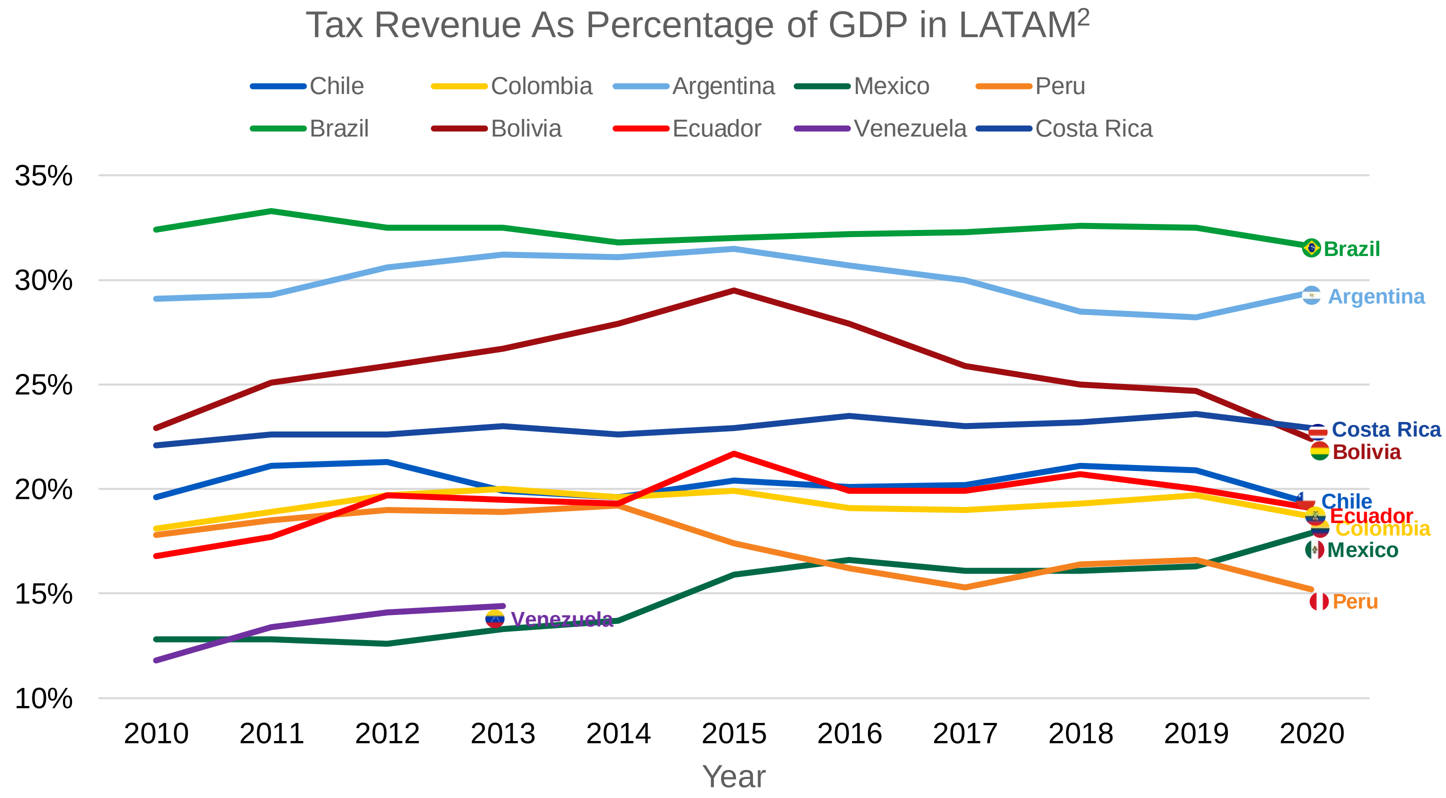
Action 5. Harmful tax practices.

Action 6. Prevention of tax treaty abuse.

Action 13. Country-by-country reporting.

Action 14. Mutual Agreement Procedure.

BEPS implementation in LATAM: Revenue effect?



[2] *Source*. OECD, Revenue Statistics - Latin American Countries : Comparative tables. Aug. 31, 2022. (Last visit)

Implementation of BEPS 1.0 in Asia

BEPS Action 2- 15

- Implementation of the BEPS Action Plan in Asian countries is uneven
- Some countries have adopted many recommendations (e.g. Indonesia, Singapore, South Korea, Japan, Malaysia, China and India)
- Many countries lack CFC rules (Action 3), and mandatory disclosure rules (Action 12)

Most important Actions implemented in Asia

- **Action 5 Harmful tax practices**
- **Action 6 PPT**
- **Action 13 CbCr**
- **Action 8-10 Transfer pricing**
- **Action 14 MAP**

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Challenges and opportunities for BEPS in Asia

Challenges

- **Success depends on effective exchange of information**
- Some Actions are complex e.g. Action 2
- Some Actions require coordination
- May have negative impact on investment
- Not all countries have signed the MLI
- Implementation by treaty negotiation can be time consuming and costly
- Lack of competence
- Administration and Information system
- Lack of data

Opportunities

- More countries signed the MLI
- Support from international organizations for capacity building
- New platforms for cooperation among Asian countries and others

Coordination & Cooperation Platforms:

- G20 Asia Initiative Bali Declaration on Tax Transparency
- Asia Forum on Taxation
- Study Group on Asian Tax Administration and Research (SGATAR)

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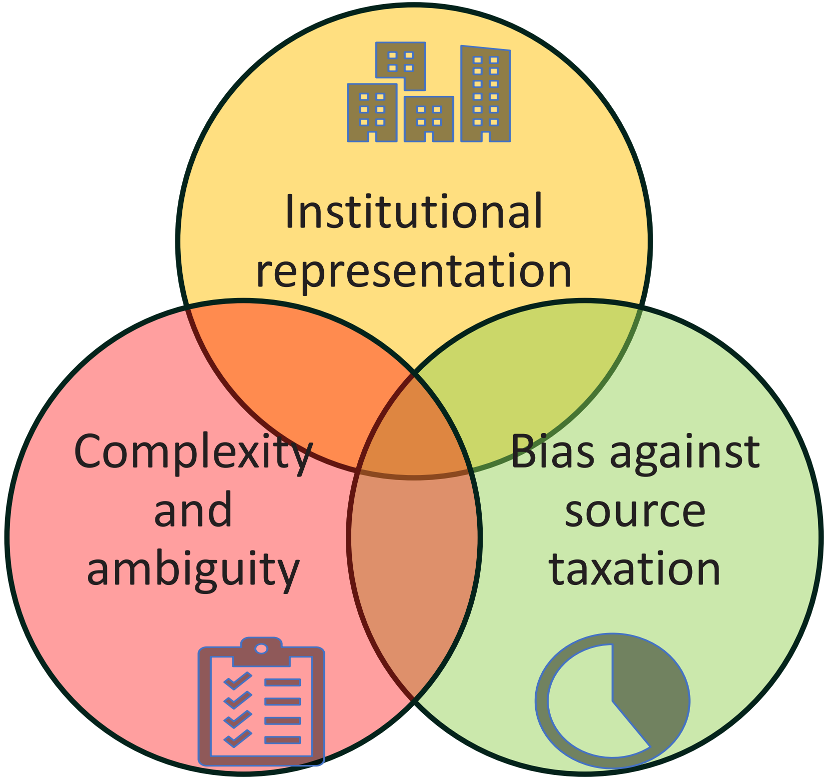
Problems faced by developing countries in relation to international tax rules



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EG: View on CBCR from a developing country

“**We have put in place a large amount of resources which have all been for nothing**…[CBCR reports do] not contain information sufficiently detailed to guide tax audits. Due to this, and the costs of complying with the standard, CBCR is, at this stage, of limited interest to [our] tax administration. However, since it is the subject of a minimum standard to which [we are] committed, steps are being taken to implement it.”

MH

CbCr: Relevance and administrative challenges

Some challenges of implementing CbCR in Africa

- High reporting threshold - EUR 750 million
- Cumbersome conditions to receive and exchange information
- Lack of confidentiality provisions in some countries
- CbC XML schema – technology
- Weak capacity to handle huge volumes of information
- Many countries have not yet set up AEOI, or have not been able to agree this with developed countries
- 32 African countries out of 165 members of the Global Forum
- Only 14 African countries signed OECD CMAATM

AO

Background: AEOI in Africa

Automatic Exchange of Information in Africa

- South Africa: 2018 Exchanges - received EUR 17 billion
- Commitments to start AEOI: Morocco & Kenya in 2022; Uganda by 2023; Rwanda by 202I

Implementation of AEOI standard in Africa - 2021 Global Forum Annual Report

Peer Reviews on Implementation of the AEOI standard in Africa – 18 countries

- Round 1 (2010-2016) most countries largely compliant
- Round 2 (2016 on-going) most countries partially compliant or compliant

Country	First exchange	2018 Exchanges	2019 Exchanges	2020 Exchanges	2021 Exchanges
Ghana	2019	N/A	56	64	62
Mauritius	2018	58	65	69	74
Nigeria	2020	N/A	N/A	25	63
Seychelles	2017	55	66	63	25
South Africa	2017	57	63	68	76

AO

Background: AEOI in Africa

Implementation of AEOI standard in Africa - 2021 Global Forum Annual Report

Country	Domestic Legal Framework	International Legal Framework	Overall Determination
Ghana	In place but needs improvement	In place	In place but needs improvement
Mauritius	In place	In place	In place
Seychelles	In place but needs improvement	In place	In place but needs improvement
South Africa	In place	In place	In place

Peer Reviews on Implementation of the AEOI standard in Africa – 18 countries

- Round 1 (2010-2016) most countries largely compliant
- Round 2 (2016 on-going) most countries partially compliant or compliant

Exchange of Information on request

- Since 2020, **African countries net senders of requests: 460 requests sent & 439 received**
- Senegal - EUR 2.7 million in 2018-2019; Uganda - EUR 25 million since 2014 -2019
- Uganda issued 33 EOI requests in 2020 – identifying EUR 34.7
- Total in Africa 2009 to 2022 EUR 1.2 billion additional revenues

Slow progress of AEOI in Africa: The challenges

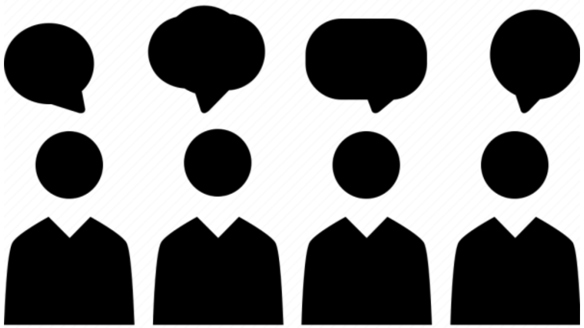
- Resource constraints; Complexity of the implementation process; Lack of confidentiality and data safeguards; Cherry-picking preferred partners - reciprocity principle; Capacity development (GF Plan of Action; African Initiative; Toolkits; Handbooks); Political dynamics

AO

The state of play on BEPS for developing countries

<u>Poll</u>*:*

What is the biggest challenge for implementing the BEPS Actions?



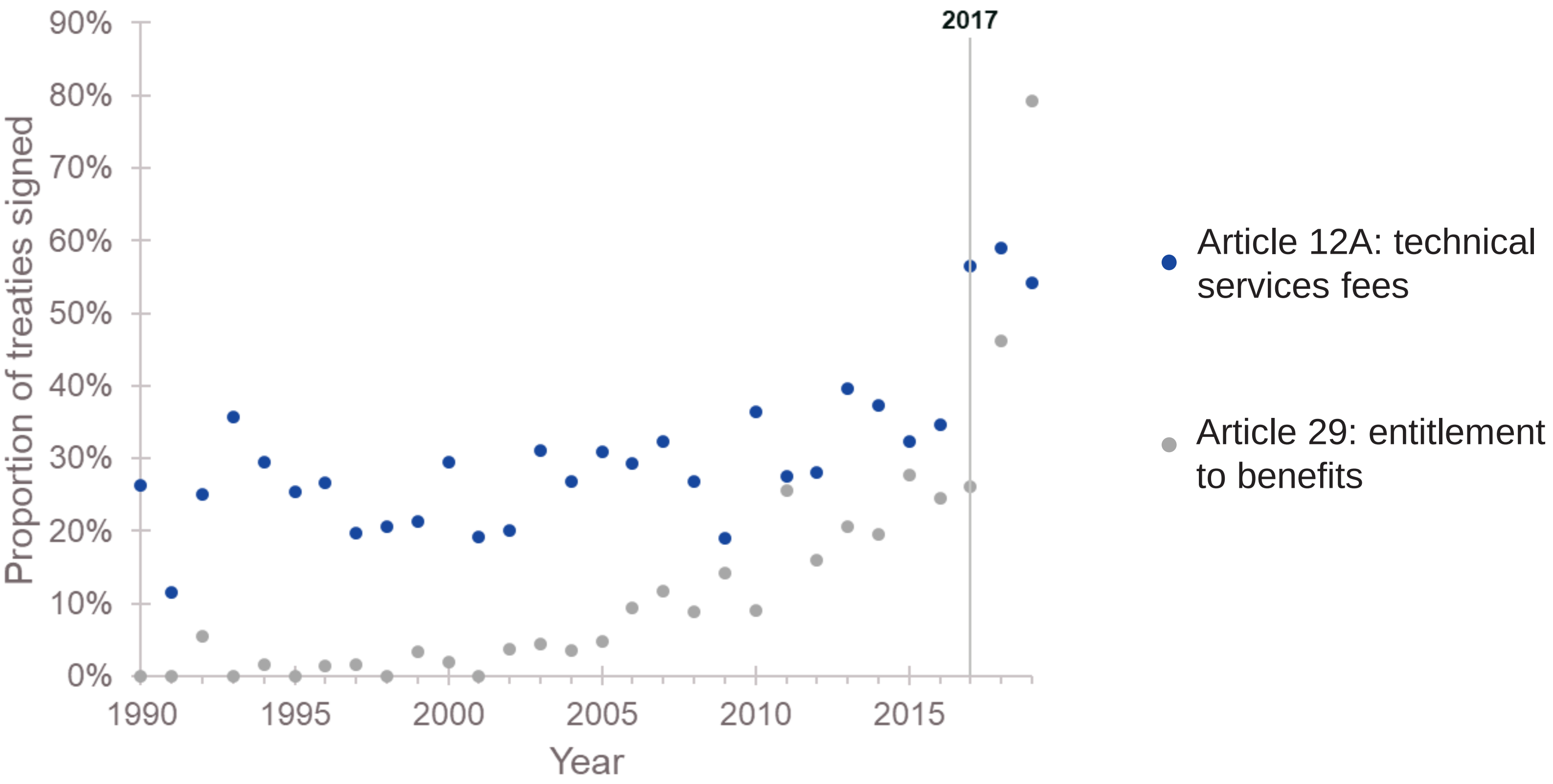
Go to your IFA App to respond to the Poll!

BEPS and international tax law development: The United Nations Tax Committee

- Developing country perspectives, realities and priorities with a practical orientation
- 15 out of 25 Tax Committee members are not from OECD
  - Stronger together – developing country coalitions
- Sustainable Development focus – consequences?
  - Capacity building as a partnership
  - Learning and evolving: examples
  - Article 13(2) offshore indirect transfers (UN/OECD Models)
  - Article 12A technical services (UN Model);

ML

UN and MLI treaty articles in treaties signed by developing countries



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The Implementation of BEPS 1.0 in Indonesia

BEPS Action	
2	Not yet implemented but hybrids law included in Income Tax Law 2022
3	Implemented since 2017, covers passive income. Challenge is insufficient data
4	Current debt to equity ratio 4: 1, but legal basis for 30% ratio to EBITDA in Income Tax Law 2022
5	No incentives in scope based on review by Forum of Harmful Tax Practices
6	PPT is implemented by MLI and treaty negotiation (costly and time consuming)
7	Implemented by MLI and treaty negotiation. But in treaty negotiation, other countries might not want to adopt the PE reforms
8-10	Transfer pricing rules updated in 2020 to align with recommendations
12	Mandatory disclosure of rulings will not be implemented in near future
13	CbCr implemented since 2016 and Indonesia has been reviewed.
14	Implemented by MLI and domestic rules. MAP rules updated in Income Tax Law 2022
15	Indonesia signed MLI in 2017 and will add more countries to the listed treaties soon

Action 4: Thin capitalization rules in Africa

Limit base erosion via interest deductions – Examples

Country	Year	legislation	Provision
Uganda	2018	Sec 25 Income Tax Act of Uganda (Cap 340)	Deductible interest in respect of all debts owed by a taxpayer who is a member of a group must not exceed 30% of the tax EBITDA
Zambia	2018	Sec 29 of the Income Tax Act (Amendment Act 17 of 2018); commenced on 1 January 2019.	Restricts interest deduction on loans to 30% of EBITDA for the company income tax
Senegal	2018	Art 9, General Tax Code	Restricts interest paid to shareholders or related companies must not exceed the rate of Bank of West African States) and must not exceed one and a half of the company's fully paid-up share capital, and 15% of EBITDA.
Côte d'Ivoire		Art 18(6), General Tax Code	Amount of the interest paid must not exceed 30% of EBTIDA.
Benin	2019	Art 149, General Tax Code	Interest shall not exceed 30% of the company's EBITDA.
Togo		Article 99-m, General Tax Code	Interest paid may not exceed the BCEAO rate and loans on the basis of which interest is computed may not exceed 30% of EBITDA.
Nigeria	2020	Finance Bill (the Bill) for 2019	The maximum interest expense deduction allowable is 30% of EBITDA.
South Africa	On or after 31 March 2023	Sec 23M of the Income Tax Act	The percentage for net interest expense will be limited to 30% of adjusted taxable income (i.e. tax EBITDA).

ATAF "suggested approach to drafting interest deductibility legislation" (2018)

Action 6 Prevent treaty abuse in African tax treaties

- Minimum standard:
  - To date, 15 African countries signed MLI, 6 submitted instruments of ratification
  - Most African countries opted for PPT
- Treaties re-negotiated with PPT
  - Switzerland/Zambia (2017) - PPT in art 22
  - Change in the Netherlands' tax treaty policy with developing countries
    - DTAs with Kenya; Malawi and Zambia (2015) - have a PPT clause
    - However PPT only in articles 10, 11 and 12; not the DTA as a whole
- OECD Peer Review of Action 6 minimum standards
  - Only 21 African counties

- Nigeria's Model Tax Convention (2019 updated)
  - preamble and PPT in line with Action 6

AO and LO

Action 7: Prevent artificial avoidance of PE status in Africa

- MLI: Most African countries have opted into all the PE provisions
- Netherland’s renegotiated treaties with African countries do not include Action 7 measures
- Some African countries have set out policy stands on PEs:
  - Nigeria - Finance Bill for 2019 - to include new definition of PE in future DTAs
  - Ghana - to updated its DTAs by defining a PE in line with UN Model
    - sales outlet or a warehouse
    - furnishing of services, including consultancy services, for more than 183 days
  - South Africa, sec 1 Income Tax Act - PE defined with reference to OECD Model
    - Treaty-negotiating policy, not consistent with above – DTAs based on UN Model
    - OECD Observer status - noted positions on art 5 of 2017 OECD Model which are based on UN Model

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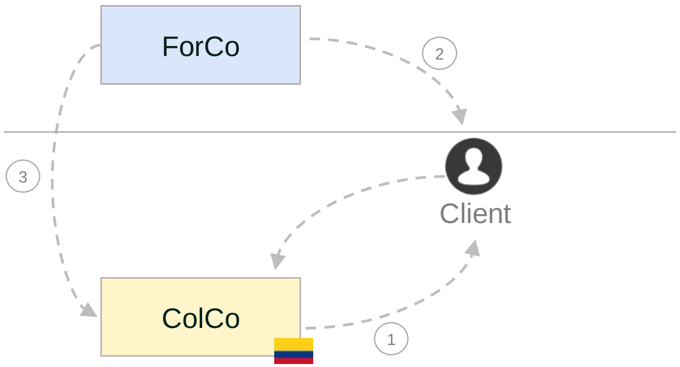
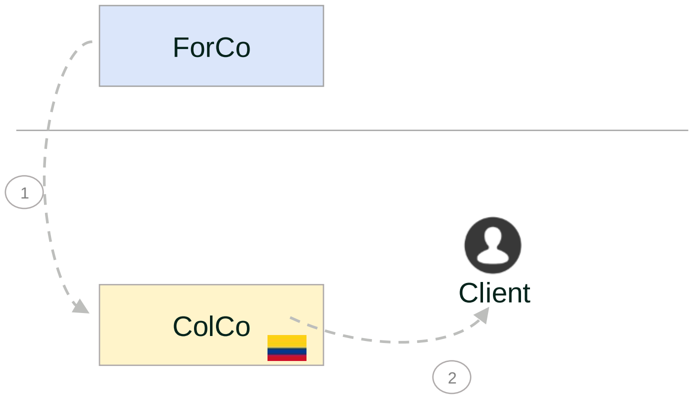
Impact of BEPS 1.0 in LATAM? *Colombian illustration*

Pre-BEPS



1. ColCo advertises domestically ForCo's digital platforms to Client.
2. ForCo sells digital platform to Client.
3. ForCo pays ColCo cost-plus for advertising services.

Post-BEPS



1. ColCo buys digital platform from ForCo arm's length.

2. ColCo re-sells spaces to Client.

What about dispute resolution and arbitration?

- Is this just a question of sovereignty?
- Is there confidence in the system?
- Does binding arbitration equate with “certainty” for all players?
- Do developing countries and taxpayers really need “stability” or “certainty”?
- What about the relationship with trade and investment treaties?

MS

Indonesia's G20 Presidency 2022: International Tax Agenda

No communique in the July meeting due to the political tension, but a chair's summary.

February 2022 Communique

INTERNATIONAL TAX PACKAGE

- Commit to swift implementation of the OECD/G20 two-pillar international tax package
- Support Pillar One and welcome completion of Pillar Two GloBE Model Rules
- Encourage Inclusive Framework to finalize Pillar One, signing MLC in the first half of 2023 and complete negotiations of the MLI and Subject to Tax Rule

Deliverable: Amount B rules (Pillar 1) and MLI STTR (Pillar 2) still ongoing

TAX & DEVELOPMENT

Strengthen agenda in light of G20 Ministerial Symposium on Tax and Development and note new G20/OECD Roadmap for Developing Countries and International Tax

Deliverable:G20 Ministerial Symposium on Tax and Development related to DRM & tax incentives July 2022

TAX TRANSPARENCY

- Support progress on internationally agreed transparency standards and welcome the Asia Initiative Declaration.
- Welcome progress at OECD on Reporting Framework for Crypto-Assets, amendments to CRS

Deliverable: Delivery of the Crypto- Assets Reporting Framework and the revised G20/OECD CRS

TAX & GENDER: **Report on Tax Policy and Gender Equality (February 2022)**

MA

BEPS 2.0: Tax for the global digital economy?

Pillar One

Objective: Reallocate taxing rights to market jurisdictions for Amount A for largest, most profitable MNEs based on nexus and profit allocation rules

Overview: MNEs derive EUR 1M from market jurisdiction; tax on 25% of profit in excess of 10% of revenue to market jurisdictions using a revenue-based allocation key

Implementation: Multilateral convention targeted to be signed by first half of 2023

Work on Pillar One:

- Some building blocks still being developed.
- Aspects of building blocks are important for developing countries: Amount B, MDSH, EoDT, tax certainty

Pillar Two

Objective:

- To address the remaining BEPS issues
- to end competition in the corporate tax rate

by ensuring that MNEs pay minimum 15% effective tax rate

Overview: Income Inclusion Rule, Under-taxed Payments Rule, treaty subject to tax rule (STTR)

Implementation:

- GloBE implemented through domestic rules
- STTR implemented through MLI
- Qualifying Domestic Minimum Tax

Work on Pillar Two:

- Model rules and commentary released
- Implementation framework and guidance still being developed

BEPS 2.0: Issues

Issue:

(1) Pillar One & Pillar Two are a package? What is the package?

(2) Could Pillar One achieve critical mass? What is the critical mass?

What will happen if critical mass is not met?

(3) Model rules of Pillar Two have been published while work on Pillar One is still on going, Will Pillar Two be implemented earlier than Pillar One?

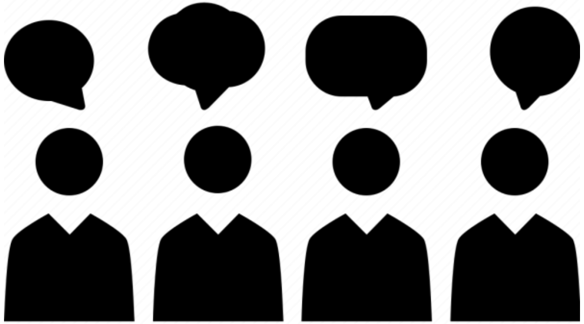
(4) Potential conflict between Pillar Two & tax treaty?

MA

Two Pillars and Inclusive Framework

Poll:

Will we have critical mass of countries adopting Pillar One and Pillar Two?



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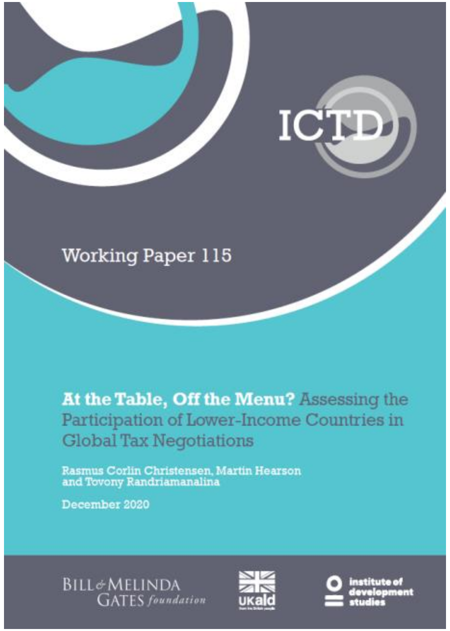
At the Table, Off the Menu? Who is participating?


ICTD

Working Paper 115

At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations

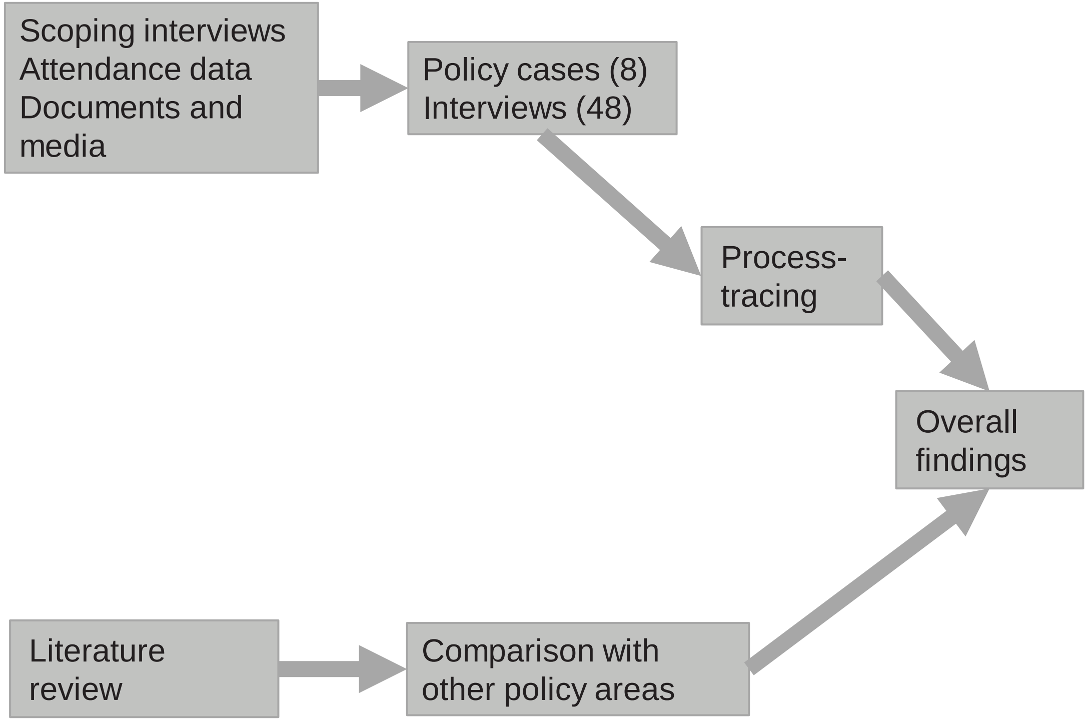
Rasmus Corlin Christensen, Martin Hearson and Tovony Randriamanalina

December 2020

BILL & MELINDA GATES foundation

UKaid

institute of development studies



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Case studies: At the table, off the menu

Venue	Dates	Case
OECD BEPS project	2013-5	'Sixth method' of transfer pricing
		Country-by-country reporting
		Mandatory binding arbitration
Inclusive Framework	2017-8	Attribution of profits
		Profit-split method example
		Hard to value intangibles
	2018-9	Significant economic presence
UN tax committee	2012-5	Technical service fees

MH

Inclusive Framework participation in theory and practice (2019 data)

	Inclusive Framework membership	**Steering Group** membership	**Working Party** attendance
OECD	27%	50%	77%
Non-OECD G20	5%	25%	10%
Lower-Income	21%	13%	4%
Others	45%	13%	7%

MH

Background: Steering group of the Inclusive Framework

Co-Chairs		
Fabrizia	LAPECORELLA	Italy
Marlene	NEMBHARD-PARKER	Jamaica
Deputy Chairs		
Jianfan	WANG	China
Mathew Olusanya	GBONJUBOLA	Nigeria
BEPS Associates		
Carlos Eduardo	PROTTO	Argentina
Stephen	COAKLEY-WELLS	Belize
Flavio Antonio	ARAUJO	Brazil
Rasmi	DAS	India
Telmuun	BYAMBARAGCHAA	Mongolia
Vladimir	GOLISHEVSKIY	Russia
Amadou	BADIANE	Senegal
Huey Min	CHIA-TERN	Singapore
Yanga	MPUTA	South Africa
Joseph	NONDE	Zambia

CFA Bureau Members		
Maryanne	MRAKOVCIC	Australia
Gunter	MAYR	Austria
Shawn	PORTER	Canada
Claudia	VARGAS	Colombia
Gael	PERRAUD	France
Emma	CUNNINGHAM	Ireland
Isaya	MUTO	Japan
Kwang-Hyo	KO	Korea
Filip	MAJDOWSKI	Poland
Mike	WILLIAMS	United Kingdom
Itai	GRINBERG	United States

as at April 2022

Barriers to effective participation

Barriers to influence

I. Structural obstacles

II. Obstacles specific to the IF

III. Limited expectations

Mechanisms to overcome

Association

Collaboration

Anticipation

Individual authority

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Pillar One and Developing Countries

Impact of Pillar One for Developing Countries

- Enable market jurisdictions to tax profit of MNEs in scope in the absence of physical presence
- Limited MNEs in scope
- Limited allocation of revenue
- Only partially solve the tax challenges arising from the digitalization of the economy
- MDSH & EoDT may reduce the tax revenue with regards to local subsidiaries of MNE in scope

Pillar One Challenges

- Data and information system
- Lack of HR with specific competence
- Complexity in administration
- Strict implementation timeline (need time to ratify the MLC and incorporate the rules in the domestic law)
- Tax certainty: mandatory binding dispute resolution & interaction with domestic compliance/law enforcement for Amount A

Pillar One Opportunities

- Country coordination on the implementation of Pillar One
- Fairer allocation of taxing rights

MA

Pillar 1 in LATAM

Complexity.

Uncertainty.

Resources constraint

Alternatives.

Malaysia as example.

Critical mass.

JV

Distinct positions of the UN on Two Pillars: Relevant to Developing Countries

- Market based taxation is entirely legitimate
- What is the problem with DSTs?
- Pillar One would not deliver a “new taxing right”
- The “negative space” of Pillar One
- Unilateralism should not be (selectively) demonized
- Chaos is not the only alternative to a multilateral convention
- Withholding taxes can have a positive role

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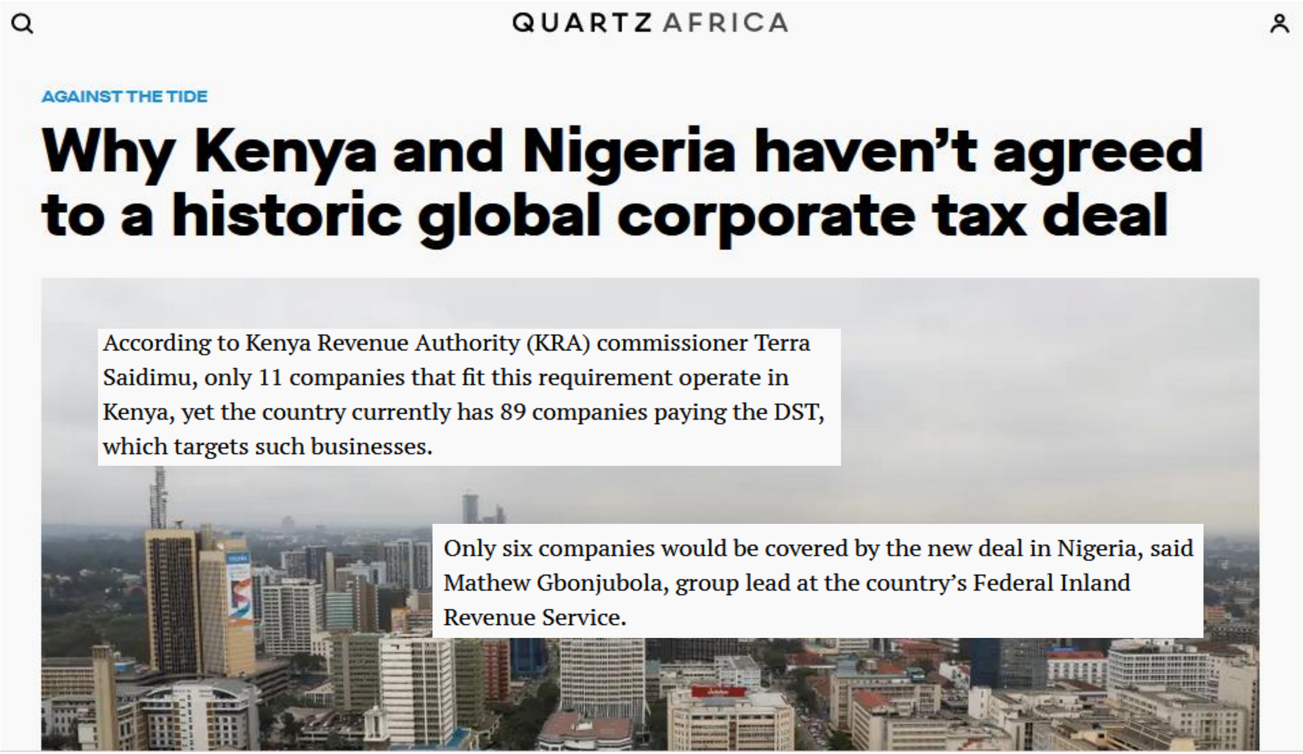
The problems of the Two Pillar “Solution”



QUARTZ AFRICA

AGAINST THE TIDE

Why Kenya and Nigeria haven’t agreed to a historic global corporate tax deal

According to Kenya Revenue Authority (KRA) commissioner Terra Saidimu, only 11 companies that fit this requirement operate in Kenya, yet the country currently has 89 companies paying the DST, which targets such businesses.

Only six companies would be covered by the new deal in Nigeria, said Mathew Gbonjubola, group lead at the country’s Federal Inland Revenue Service.

LO

An alternative to Pillar One: Nigerian "Significant Economic Presence" (SEP)

- SEP rule introduced in Nigeria by Finance Act 2019 and became effective in May 2020
  - Electronic commerce and digitalised activities (***digital SEP***)
  - Provision of technical, management, consultancy or professional services outside Nigeria (***services SEP***) to a person resident in Nigeria
- Objective is to modify the existing profit allocation and nexus rules based on the concept of **Significant Economic Presence (SEP)** **in line with** the principle of aligning profit with underlying economic activities and value creation
- Taxable presence determined by factors that demonstrate a ***purposeful and sustained interaction*** with the economy through technology and other automated tools, and revenue derived from remote transactions into the country
- Creates a taxable presence for companies engaged in digitalised activities or that provide technical, professional, management and consultancy services

LO

Determining factors to establish existence of a SEP

Digital SEP

- *(a)* gross turnover or income of more than N25 million (***$55K***) or equivalent, in that year, from any or combination of a number of digital activities set out in the SEP Order;
- *(b)* uses Nigerian domain name or registers a website address in Nigeria; or
- *(c)* has a ***purposeful and sustained interaction*** with persons in Nigeria by customising its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency

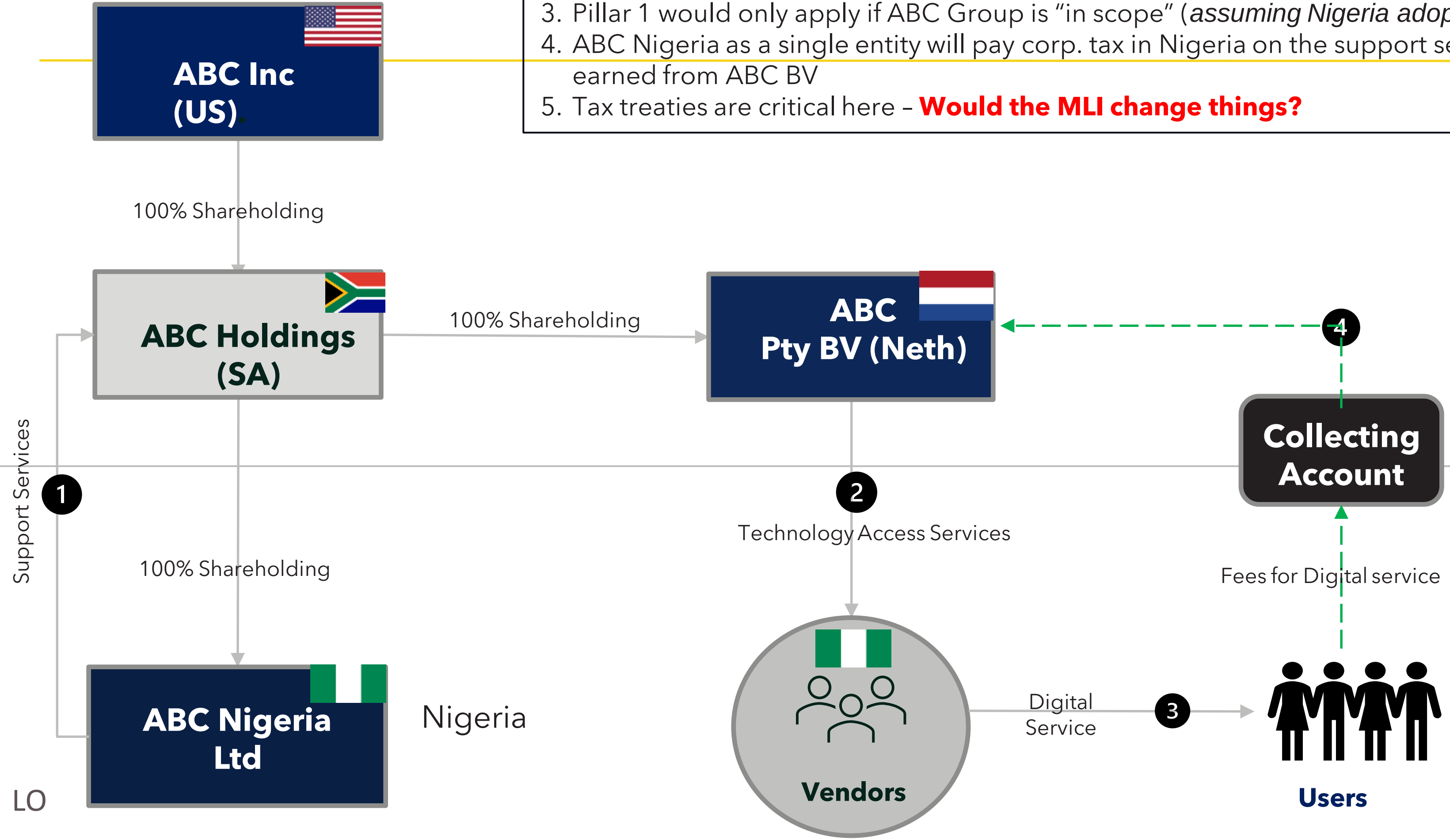
Services SEP

- carries on a trade or business comprising the furnishing of services of technical, professional, management or consultancy in nature
- it earns any income or receives any payment from—
- *(a)* a person resident in Nigeria; or
- (*b*) a fixed base or agent of a company, other than a Nigerian company in Nigeria.
- services of a technical nature includes advertising services, training, or the provision of personnel

LO

PE determination: SEP v. DTA rules - NIGERIA

1. ABC SA and ABC BV do not have a PE in Nigeria
2. SEP rules will not apply because of treaty override, so no taxable presence
3. Pillar 1 would only apply if ABC Group is "in scope" (*assuming Nigeria adopts P1*)
4. ABC Nigeria as a single entity will pay corp. tax in Nigeria on the support services fees earned from ABC BV
5. Tax treaties are critical here – **Would the MLI change things?**



Indonesia's perspective on Pillar One; and Alternatives

- Indonesia supports Two-Pillars as a package
- The complete design of Pillar One should take into account fairness, certainty, simplicity, and developing countries' interests.

Implementation:
Legal basis to sign MLC and implement Pillar One has been incorporated in the amendment of ITL 2022.

Alternatives for digital economy?

VAT on import of services and intangibles traded through electronic transaction:

- Has been implemented since July 2020
- Has generated significant revenue for the Government

Income Tax and Electronic Transaction Tax based on SEP concept (Law 2/2020) – not yet effectively implemented

Significant Economic Presence (SEP) criteria:

- Foreign digital businesses satisfy global revenue threshold
- Foreign digital businesses satisfy domestic sales threshold
- Foreign digital businesses satisfy active users threshold

1. Foreign digital businesses domicile in **non-treaty** country and satisfy SEP will be regarded to have PE and have to pay income tax
2. Foreign digital businesses domicile in **treaty partner** country and satisfy the SEP will have to pay **Electronic Transaction Tax.** SEP threshold and tax rate has not been stipulated.

MA

An alternative to Pillar One: UN Model Article 12B

- Article 12B on Taxation of automated digital services (2021)
- A development (and developing country) focused provision:
    - Preserves source country taxes;
    - Recognizes the importance of withholding taxes;
    - Easy administration; and
    - Not linked to mandatory binding dispute settlement (but it is an option in the UN Model).

ML

Looking at Article 12B

- Allows income from automated digital services arising in a Contracting State and paid to a resident of the other Contracting State to be taxed in the Contracting State in which it arises, at a rate to be established through negotiations.
- Profit-based option at taxpayer election.
- **“Automated digital services”** means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from service provider.
- **includes especially**
    - *Online advertising services;*
    - Supply of user data;
    - Online search engines;
    - Online intermediation platform services;
    - Social media platforms;
    - Digital content services;
    - Online gaming;
    - Cloud computing services;
    - Standardized online teaching services.
    - **But not if Royalties (Article 12) or Fees for Technical Services (Article 12A).**

ML

Looking at Article 12B – Next steps?

- UN Tax Committee's Digital Subcommittee is looking at:
  - Possible Multilateral Instrument to support wider adoption of Article 12B
  - Maybe also including Article 12A (Fees for Technical Services)
  - and a UN Subject to Tax Clause?

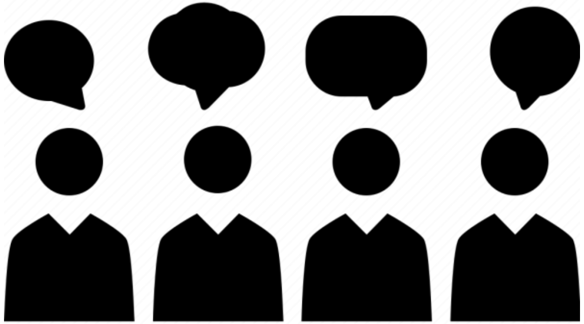
- Broader issue of physical presence requirements.

ML

The state of play on BEPS for developing countries

Poll:

What is the best alternative to Pillar One?



Go to your IFA App to respond to the Poll!

Pillar Two and Developing Countries

Impact of Pillar Two for Developing Countries

- Additional tax revenue?
- Limited application of IIR & UTPR in developing countries
- Limited application of STTR
- Neutralize the effect of tax incentives with ETR below 15%
- Encourage the imposition of CIT min. 15%

Pillar Two Challenges

- Heavily reliance on tax incentive to attract investment
- New design of tax incentives based on economic impact assessment
- CIT rate reduction to attract investment
- Complexity in administration
- Lack of HR
- Data and information system
- Dispute resolution with regards to GloBE
- Coordination on the implementation of IIR & UTPR

Pillar Two Opportunities

- The implementation of QDMTT to secure tax revenue
- Platform for coordination in the implementation of Pillar Two
- Less reliance on tax incentives
- Introduce more non-tax incentives to attract investment
- Maintain tax incentives which is less impacted by GloBE rules or incentives which require significant employees and tangible assets

MA

PILLAR 2 issues for African countries

- Minimum rate of 15% is too low to effectively deter tax competition
  - OECD 2021 statistics – Averages: 26.8% in Africa; 19.2% in Asia; 19.1% in LAC

- Rule order:
  - Priority right to apply the top-up tax - home country - Income Inclusion Rule (IIR)
  - Backup right - host country - Undertaxed Payment Rule (UTPR)
  - UTPR - will not apply to MNE groups during the “initial phase” of their international activities

PILLAR 2 issues for African countries

- Qualified domestic minimum top-up-tax (DMTT):
  - Covered tax that can be credited against any liability under rules
  - Source states may capture additional revenue – ATAF to design suggested approach for drafting DMTT
  - Developing countries face challenges in administering refundable tax credits
  - QDMTT will not help countries that levy corporate tax above 15%
  - Advantageous for countries that wish to attract real investment, low rates protected by substance-based carve-out
  - QDMTT would establish a ceiling for all states and encourage continued tax competition
- Subject to tax rule:
  - Minimum tax on deductible payments eg interest, royalties & other payments
  - Will only benefit developing countries with treaty rates below the 9% minimum rate
  - May not be beneficial if not extended to service fees and capital gains
  - (UN Model Art 12A & Art 12B)

AO

Pillar Two consequences and challenges of applicability in Africa

- 28 of 141 members of OECD Inclusive Framework are African countries
  - ATAF, G24, South Centre: Concerns raised by developing countries largely ignored
  - OECD impact analysis: Low- and middle-income countries not to benefit much
- Not applicable in most African countries – threshold of MNEs revenue of EUR 750 million or more
- Common approach but countries may choose to implement the rules
  - Constraints: complexity, administrability - wait and see approach
  - South Africa 2022 Budget Review to adopt Pillar 2 Model rules
  - Impact: DTAs and tax sparing; BITs – stabilisation clauses, MFN & NT clauses; CFC rules
- OECD: countries may adopt other measures which are in line with the Pillar 2 aims
  - USA GILTI; UK's 2022 Consultation paper - to retain existing anti-avoidance measures
  - African countries: Adapt "alternative minimum corporate taxes" (AMCT) to suit Pillar 2 aims
    - Do AMCT qualify as covered taxes and tax credits be granted?
    - Covered taxes: corporate taxes & taxes levied on retained earnings, corporate equity
    - Tax imposed "closer in design to an international alternative minimum tax"
- ATAF: countries that do not want to implement the rules should:
  - Not be pressurised into adopting them
  - Not be penalised for adopting alternatives which are more suitable for them

Indonesia’s Perspective on Pillar Two

Indonesia’s Perspective on Pillar Two

- Indonesia supports Two-Pillars as a package
- Pillar Two should not discourage tax investment
- The work on MLI STTR shall be accelerated

Implementation of Pillar Two in Indonesia

1. legal basis to sign MLI and implement Pillar Two in the amendment of ITL 2022
2. Economic impact assessment is still on going.
3. Review of the current tax incentives has been performed
4. In process to incorporate GloBE rules in the domestic laws

MA

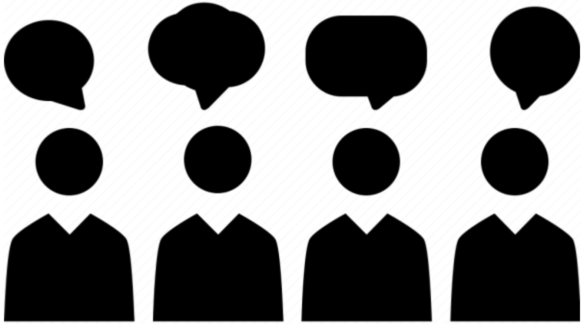
Pillar 2 in LATAM

- Limitation.
- Cost of implementation.
- Adequate and proportional.
- FDI attraction.
- Soak-up taxes.

The state of play on BEPS for developing countries

Poll:

Will Pillar Two …



Go to your IFA App to respond to the Poll!

Final comments from our esteemed panelists: International tax and BEPS in developing countries

- **The Government Representative**:
  - Ms Melani Astuti, Indonesia
- **The tax practitioner**:
  - Ms Lolade Ososami (Nigeria)
  - Mr Juan David Velasco (Colombia)
- **The political scientist:**
  - Dr Martin Hearson
- **The UN expert:**
  - Mr Michael Lennard
- **The tax academic**:
  - Professor Annet Oguttu

Thank you!

And enjoy your evening

IFA 2022
BERLIN · GERMANY

Developing countries, their policies and their experience in regard to the OECD BEPS process

Chair: Miranda Stewart

Date: 7th of September 2022