BRIEFING ON TAX JUSTICE ISSUES

Africa

By

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AFRICA REGION BRIEFING ON TAX JUSTICE

This briefing paper on tax justice issues in Africa is in preparation for meetings of the African Union Economic, Social and Cultural Council and the African Tax Administrators Forum (ATAF) in November 2013. The aim is to raise awareness amongst PSI affiliates, and also affiliates of other Global Union Federations and civil society partners, of tax justice priorities. This will inform regional and country based campaign planning activities. This briefing provides an overview of:

1. Why is taxation important?
2. Tax havens and offshore finance;
3. Tax base erosion & profit shifting (BEPS).
4. Addressing tax evasion.

1.0 Why is taxation important?

Taxation is an essential part of a good government. It has four main goals:

- To raise **revenues** for public spending, which can be used to meet the basic needs of population – food, healthcare, shelter, provide quality public services, for example, health, education, economic development stimulus, maintain institutions and governance structures. [1]
- **Redistribution of income** between high and low income groups.
- **Representation** – an effective taxation system enables citizens to feel that they contribute and own public policies. An ineffective taxation system can lead to social exclusion and increasing levels of inequalities.
- **Changing behaviour** of individuals and companies – through taxes that shape or inhibit behaviours, e.g. taxes on alcohol & tobacco, taxes on environmental pollution.

Taxation plays an essential part in supporting the financing of quality public services. Without an effective taxation system, quality public services (QPS) will be inadequately funded and will struggle to meet the needs of the population. There are several issues that need to be addressed through an improved system of taxation: rising inequality and the underfunding of QPS, such as health and social services. The essentials of a good taxation system depend on a progressive taxation system when higher income groups pay more tax than lower income groups. The existence of an effective government tax authority, which is competent to collect taxes is also important. This depends on well- paid tax inspectors, a lack of corruption and transparency of personal and corporate financial information. Cuts in government services often affect the ability of national tax authorities to collect taxes. The African Tax Administration Forum (ATAF), which was launched in 2009, and currently has 36 members, has an agreement on mutual assistance on tax matters. It allows for cross border assistance and exchange of information on tax issues and so provides a mechanism which countries can use in dealing with tax evasion. [2]

Table 1: Tax revenue as % of Gross Domestic Product (GDP) 2008-2011

	2008	2009	2010	2011
Africa				
Ethiopia 7.9	6.6	8.2	9.3	
Ghana	13.9	12.6	13.4	14.9
Kenya	18.8	18.8	19.5	19.5
Nigeria	0.3	-	-	-
South Africa	28.2	25.4	25.9	26.1
Zambia	17.4	15.0	16.6	-
Australia	24.3	22.2	20.7	20.5
Sweden	21.7	21.7	21.3	21.9
UK	28.8	25.8	26.7	27.4
US	10.4	8.5	9.2	10.1

Source: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS

Table 1 shows tax revenues as a percentage of Gross Domestic Product (GDP) for a group of African countries. Nigeria had a minimal % of GDP originating from tax revenue in 2008, with no data available since then. Ethiopia had below 10% of GDP coming from tax revenues, with a slight increase in 2010 and 2011. Ghana, Kenya and Zambia had more than 12% but less than 20% of GDP sourced from tax revenues, although Kenya had a higher proportion than Ghana or Zambia. Only in South Africa does tax revenue contribute over 25% of GDP, with similar percentages to the UK.

There are several different types of taxes:

- Personal taxes – paid on income earned, or earned interest;
- Property taxes – paid on property owned – annually or on buying/ selling;
- Service taxes (VAT) – paid on goods and services e.g. consumer durable goods;
- Commercial/ business taxes – companies pay taxes on profits;
- Import/export taxes – paid on goods being imported and/ or exported.

Table 2: Progressive and regressive taxation

Types of tax	Progressive taxation	Regressive taxation
Income tax	Income taxes – higher income groups pay more tax	Low or flat rates of tax so that lower income groups pay a disproportionate part of their income in tax. Income taxes have limited liabilities
Value Added Taxes (VAT) for good and services	Value Added Taxes operate with exemptions so that low income groups are not disproportionately affected	VAT is imposed without exemptions. Low income groups are more affected by VAT on good and services
Social security payments	Social security payments must not be capped – so that high income groups pay more contributions	Social security contributions are capped so that higher income groups pay a smaller % of their income towards social security
Capital Gains tax	Capital gains taxes are part of a tax systems – there are no exemptions when compared to income taxes	Low rates of capital gains taxes and extensive exemptions from capital gains tax
Wealth / inheritance taxes	Wealth or inheritance taxes operate effectively	Many ways of avoiding paying inheritance or other forms of wealth taxes or no wealth taxes at all
Tariffs & trade taxes	Tariffs and trade taxes are used to protect new/ young industries, exploitation of natural resources or cost effective charges on low income groups	Allowances and reliefs are only available to high income groups, e.g. tax relief on pension contributions or mortgage payments

Progressive taxation and reduction of inequalities

A recent OECD study (2012) examined different patterns of inequalities in OECD countries and assessed the causes of labour income inequality and the impact of taxes and cash transfers.[3] The study found that progressive personal taxes play a significant role in reducing inequalities. Social security contributions, consumption taxes and property taxes have a more regressive effect. In addition, policies and institutions also contribute to reducing inequalities. Education, anti-discrimination and labour market policies can make the biggest impact on inequalities and also help to boost economic growth.[4]

Personal taxation in Africa

Table 3: Personal and other taxes

Country	Value Added Tax (VAT) – sales tax	Personal income tax	Inheritance/ wealth tax/capital gains tax
Ethiopia	15%	10-35%	None
Ghana	12.5% and 2.4% National Health Insurance levy on the supply of goods and services in Ghana and the importation of goods and supply of imported services	0-25%	15%
Kenya	16% (12% electricity/fuel oils)	10-30%	Tax suspended in 1985
Nigeria	5%	7-24%	10%
South Africa	14% (some 0% exemptions)	18-40%	33.3% capital gains tax 20% donations tax on transfer of wealth from one person to another
Zambia	16%	0.25% – 35%	None

Source: KPMG Tax profiles

Value Added Tax (VAT) or sales tax is a regressive form of taxation because it affects low income groups, particularly women.[5] It is frequently imposed on goods such as fuels, which affect the cost of household cooking and public transport. Low income groups spend a higher proportion of their income on these basic goods. Ghana has a 2.4% national health insurance levy imposed as a fax on goods and services. Although earmarking a tax for a public service, such as health insurance, is a positive development, low income groups will be paying a higher percentage of their income towards this than higher income groups.

In Nigeria, there is a high level of personal income tax evasion as well as a relatively low rate of personal taxation. A number of studies have looked at the extent of and perceptions relating to tax evasion among personal tax players.[6] Adebisi & Gbegi (2013) found that one of the main ways to reduce tax evasion among individual tax players is to spend sufficient government revenue on public goods and services.[7]

In South Africa, the Katz Commission on tax reform was set up in 1994 and informed the establishment of an independent tax administration. The tax base was broadened and marginal tax was lowered. However, tax losses continue to be a major problem, with the South African Revenue Services (SARS) estimating that about R 30 billion of tax, equal to 45% of government revenue, is lost, mainly through tax evasion, by both individuals and companies.[8]

Threats to national taxation systems

Tax evasion is a common problem in many countries in Africa and has an impact on government revenues and the supply of public services. A joint research study conducted by Global Financial Integrity and the African Development Bank (2013) found that from 1980 and 2009, between US$1.2 – 1.4 trillion dollars was lost to Africa from illicit financial flows. The report notes that tax evasion forms a significant part of these illicit financial flows, although the exact percentage is not given. Bribery, theft, kickbacks also form part of the illicit financial flows. Africa as a whole loses more in illicit financial outflows than it receives in international aid. Trade mispricing accounts for $38.4 billion of the $63.4 billion illicit outflows per year in sub-Saharan Africa. In contrast, foreign direct investment and foreign aid from OECD/DAC amount to inflows of $62.2 billion.[9] The Economic Commission for Africa (ECA) estimates that illicit financial flows are up to $50 billion a year which, they note, is about double the aid received by Africa.[10] Oxfam International estimates illicit financial flows to be about $200 billion each year.[11]

The three regions that account for the greatest outflow of illicit funds are North Africa (with the largest outflows from Egypt, Algeria and Libya); West and Central Africa (with the largest outflows from Nigeria, the Republic of Congo, and the Cote d'Ivoire); and Southern Africa (with the largest outflows from South Africa, Angola, and Zimbabwe). Overall, illicit outflows from Sub-Saharan Africa are far worse than those from North Africa. Using the measure of volume of outflows, Nigeria, South Africa and Egypt are the three largest exporters of illicit outflows.[12]

2.0 Tax havens/ off-shore finance

Tax havens offer individuals and companies the opportunities to pay little or no tax. They also enable both individuals and companies ways of hiding the details of wealth being accumulated, whether through company, property and other income generating activities, often as a result of corrupt and criminal practices. They provide individuals, companies, organisations a way to avoid adhering to rules, laws and regulations of different countries, 'using secrecy as their prime tool' and are often referred to as 'secrecy jurisdiction'. [13] Some examples of centres that provide this 'secrecy' are the British Virgin Islands, Cayman Islands, Jersey, Switzerland, Singapore, London, New York. There have been recent attempts in Africa to set up new off-shore tax havens in Ghana, Kenya and Mauritius.

Ghana

In 2005, the Ghanaian President John Dufour signed a Memorandum of Understanding with Barclays Bank of Ghana, to further investigate the potential for creating an International Financial Services Centre (IFSC) in Accra. In 2007, the regulatory environment for offshore companies was drafted but the Ghanaian Parliament did not approve the project. A few years later, in order to avoid being blacklisted by the OECD, the new government of President John Atta Mills revoked Barclays Bank's offshore banking license with effect from June 2011. However the legal framework establishing the IFSC is still in place, making it easy to reactivate it in future. [14]

Kenya

There is growing evidence that Kenya is being encouraged to become a new International Financial Centre by the City of London and its lobbying arm, CityUK. Lord Mayors of London have visited Kenya annually since 2011. An international finance centre is effectively a regional 'offshore' financial services centre or tax haven.[15]

Mauritius

In November 2013, the NGO ActionAid reported that Deloitte's, a global accounting company, had been advising companies on how to arrange their investments through Mauritius and so avoid paying tax. If a company sets up a holding company in Mauritius it will not have to pay tax in the country in which it operates, for example, Mozambique. Mauritius has been marketing itself to companies as 'the gateway to Africa'. [16] [17]

Corporate reporting is often opaque and lacking in transparency but many countries do not have legal requirements to make financial and company details public. This is an additional problem that has to be addressed in the search for tax justice. Table 4 shows the results of a secrecy audit for Kenya and Mauritius.

Table 4: Secrecy in Ghana and Mauritius

Country	Secrecy score	% market for global offshore services	Is there banking secrecy?	Is ownership of public companies on public record?	Are public company accounts on public record	Are records of company ownership maintained by relevant authority
Ghana	79%	1%	Yes	No	No	No
Mauritius	74%	1%	Yes	No	No	No

Source: Secrecy Jurisdictions http://www.secrecyjurisdictions.com

3.0 Tax base erosion and profit shifting (BEPS)

The cross border mobility of goods, services, capital and jobs has made it more difficult for national governments to tax individuals or companies. Competition between government authorities in attempts to attract foreign direct investment (FDI) has resulted in governments lowering tax rates for global companies. A country's tax base is eroded when multinational companies reduce the taxes that they pay in the country where their income is generated.

MNCs use cross-border payments to move profits to low or zero tax centres. These include:

- Royalties;
- Interests;
- Payments for good purchased for re-sale;
- Fees for technical and other services;
- Payments for supplies and other equipment.

The transactions involved in these types of payments allow companies to move the profits from the types of activity listed above to be moved from one country to another. As a result, companies do not contribute to paying tax in exchange for the company's use of public services and local labour force. Even if illegal activities are identified, it is extremely difficult for a national government to enforce their tax legislation. [18]

Tax base erosion on a country results in a government being unable to raise enough revenue to be able to provide for the needs of the population and to invest, build infrastructure and strengthen institutions. The government is unable to redistribute income from high to low income groups and the country has increasing polarisation between rich and poor. A lack of tax compliance weakens government institutions and tax legislation.

If companies avoid the payment of tax, other people have to pay and this increases inequalities. Local companies that only operate in national markets find it difficult to compete with MNCs because MNCs move their profits across borders to avoid tax.

Transfer pricing

"Transfer prices are significant for both taxpayers and tax administrations because they determine in large part the income and expenses, and therefore taxable profits, of associated enterprises in different tax jurisdictions." [19] They play an important part in estimating a company's profit or loss before taxation. As some countries have lower tax rates than others, the aim of a company is to allocate more profits to subsidiary companies operating in low tax countries than in high tax countries.

One of the underlying problems, exacerbated by increasingly rapid Information and Communications Technologies (ICT) systems which can move capital around the world, is that the current international legislation on transfer pricing is unable to deal with the rapid movement of capital or systems used by transnational companies to obscure internal company systems. The current arrangements for transfer pricing are based on the 'arms-length principle', which means that companies are independent and operate on an equal footing. Usually companies can set prices and national tax authorities can intervene if they feel that prices are unrealistic but this requires expertise and capacity within tax authorities, which can be undermined by the legal power of transnational companies.

Lost tax revenues and impact on government spending

In Africa, there is widespread tax avoidance through transfer pricing. Hollingshead (2010) estimated the tax revenue losses from transfer mispricing, using national corporate income tax rates. Overall, the loss in developing countries was between US$98 billion to US$106 billion annually from 2002-2006. The analysis of African countries showed that Zimbabwe, Mali, Republic of Congo, Zambia, Cameroon, Guinea, Ethiopia, Central African Republic and Togo showed the largest losses of tax revenue as a percentage of government revenue. These are set out in Table 5 below. Zimbabwe recorded the largest (31%) proportion of government revenue lost. Several countries listed had relatively small government revenues but mispricing resulted in over 20% of this revenue being lost.

Table 5: Countries in Africa with largest tax revenue losses as % of government income Average 2002-2006 ($ millions)

Country	Average trade mispricing (non-standardised)	Average tax revenue loss (non-standardised)	Average government revenue (excluding grants)	Loss of tax revenue (as % of government revenue)
Zimbabwe	$750.36	$225.11	$714.50	31.5%
Mali	$572.51	$200.38	$796.90	25.1%
Republic of Congo	$987.34	$375.19	$1,504.95	24.9%
Zambia	$678.42	$237.45	$1,094.26	21.7%
Cameroon	$209.69	$80.73	$471.20	17.1%
Guinea	$362.88	$127.01	$769.70	16.5%
Ethiopia	$422.90	$126.87	$782.27	16.2%
Central Africa Republic	$51.35	$15.41	$105.60	14.6%
Togo	$117.9	$43.62	$322.54	13.5%
Nigeria	$3,401.23	$1,020.37	$19,760.00	5.2%
South Africa	$3,872.00	$1,084.22	$58,470.69	1.9%
Kenya	$194.20	$48.55	$3,303.62	1.5%

Source: Hollingshead, 2010 [20]

In other countries, which did not show such high percentage losses of government revenue, there is still extensive mispricing which affects government revenues. With corruption endemic to the Nigerian economy (139 in the 2012 Corruption Perception Index), tax evasion is a serious problem.[21] It has been argued that Nigeria is the only country in the world where illicit financial flows, estimated at about 10% of GDP are larger than tax revenues levied outside of the natural resources industries.[22] Tax from non-oil revenue yielded between 6% and 6.5% of GDP from 2007 to 2011 compared to oil tax revenue of 12.7 % in 2009 and 26.5% in 2008.[23] Tax payments make up only 7% of Nigeria's GDP, as compared to 21% in Ghana.[24] According to the Federal government, more than 350 000 companies do not pay tax.[25]

In Kenya, tax losses in the past 10 years as a result of transfer pricing, are about Sh 11.5 billion annually. This is equivalent to the amount that Kenya plans to spend on the payment of interest on foreign loans in the current financial year.[26]

Zambia lost about US$8.8 billion in illicit tax flows over the last 10 years.[27] The Bank of Zambia found that companies are evading tax by charging high interest rates on external loans.[28] A recent Action Aid report (2013) highlighted the case of Zambia Sugar, a subsidiary of Illovo Sugar, owned by Associated British Foods (ABF), which had avoided paying billions of *kwatcha* in tax. The company did this by making large payments to sister companies in tax havens such as Ireland, Mauritius and the Netherlands, which effectively reduced the company's taxable profits in Zambia. Zambia Sugar had also negotiated to qualify for two special tax breaks which resulted in large tax refunds.[29]

<u>What could be bought with lost tax revenues?</u>
Large sums of money are being lost through tax evasion and transfer pricing. These tax losses have an impact on any country. In Nigeria, the Government of Ekiti State has specifically blamed tax evasion for the underdevelopment of the state.

In the case of Zambia Sugar, Action Aid calculated that Zambia has lost US$17.7 million (ZK78 billion) since 2007, when Associated British Foods (ABF) took over the Illovo sugar group. This amount is 14 times larger than the UK aid provided to Zambia to combat hunger and food insecurity in the same period. In addition, the effect of special tax breaks received by Zambia Sugar – estimated to reduce the company's tax bill by at least US$3.6 million a year in future – would cover the cost of all interventions needed to address child malnourishment in Zambia. The total amount of tax lost to the Zambian government through Zambia Sugar's tax haven transactions would put an extra child into in primary school every 12 minutes. [30]

4.0 Addressing tax evasion

Many argue that one way of dealing with tax evasion is to reform domestic tax authorities. Weaker and less transparent institutions make the tax situation worse and what is needed is the reform of domestic tax authorities to improve their technical expertise and collection capacity.[31]

A High-Level Panel on Illicit Financial Flows from Africa was established in 2011 and inaugurated in February 2012, on the basis of a resolution of the 4th Joint Annual Meetings of the meeting of African Ministers of Finance, Planning and Economic Development which was co-convened by the UN Economic Commission for Africa and the African Union. [32] The Panel is currently carrying out its work by conducting seven country case studies – on Nigeria, Algeria, Democratic Republic of Congo, Kenya, Liberia, Mozambique and South Africa. Another regional initiative that has been launched is a monitoring system, set up between six countries (Tanzania, Malawi, Zambia, Kenya, Uganda and Mozambique), with the aim of fighting cross border tax evasion and theft of goods.

<u>Nigeria</u>
In Nigeria, much of the problem stems from off-shore tax evasion, where companies set up off-shore offices, or engage in transfer pricing, to evade tax in their country of origin. PriceWaterhouseCooper (PWC), a global accounting and consultancy company, identified the lack of coordination between different structures as a major problem that facilitates tax evasion. [33] For example, it is possible to register with the Corporate Affairs Commission (CAC), in Nigeria, without registering with the Federal Inland Revenue Services (FIRS).

The FIRS is now intending to target firms to try and halt the outward flow of funds. New regulations came into effect in August 2012 governing transfer pricing, and as part of the implementation of these laws, the

FIRS plans to audit the financial reports of firms operating in the country. The first returns under the new tax pricing regime will start by December, and these will then be scrutinised against the companies transactions declared on their report.

Kenya

The Kenya Revenue Authority (KRA) is responsible for tax collection. Recently, it has taken several measures to combat tax evasion and avoidance. It has:

- Entered into several double taxation agreements (DTAs);
- Joined, in 2010, the membership of the Global Forum on Transparency and the Exchange of Information for Tax Purposes ;
- Agreed legislation to allow for Tax Information Exchange Agreements (TIEAs).[34] These agreements have been signed with five jurisdictions, and others are being negotiated.[35]
- Started to ratify the Multilateral Convention on Mutual Administration Assistance in Tax Matters, which would give the KRA automatic access to tax information in 56 countries.[36]

The Kenyan government has been proactive in taking action against companies suspected of tax evasion. In 2012 they put in place a team of transfer pricing experts to audit the accounts of companies to assess for transfer mispricing and tax evasion. In September 2013 it was reported that the KRA had recovered about Sh4 billion in unpaid taxes, after an audit was done of about 40 multinational firms suspected of tax evasion. More than 10 of these firms had been found to use the transfer pricing mechanism to declare losses, which meant they did not have to pay tax.

Multinational companies which persistently report losses or only modest profits despite other indicators suggesting otherwise, were particularly targeted. According to John Njiraini, KRA Commissioner General, "we have….been suspicious of large and highly successful multinational firms that keep on posting modest profits or even losses".[37] One example of a company that has been investigated by the KRA was Karuturi Global Ltd, an Indian-based company, and one of the world's biggest producers of cut roses, which the KRA had ruled had used transfer mispricing to avoid paying the government nearly US$11 million in corporate income tax. The company appealed the ruling on 4 April 2013.[38]

Double Taxation Agreements

A growing number of African countries have entered into Double Taxation Agreements (DTAs), for example, Kenya, which try and clarify when an individual or company moves from one country to another, which country should tax the income of either the individual or company. There are two models of Double Taxation Agreements: the OECD model and the UN model. The OECD model places more emphasis on residence based taxation, which favours OECD countries where many multinational companies are based. The UN model gives more rights to countries receiving inward investment, most often low income countries. One of the problems facing Double Taxation Agreements is the lack of transparent information exchanged between high and low income countries and with secrecy jurisdictions. Tax justice campaigners argue that Double Taxation Agreements can sometime lead to double 'no' taxation, with individuals or companies not paying tax in either their country of origin or the source of investment or income. [39]

The Fair Share Commitment

People around the world, from the south to the north, are raising their voices in a united demand:

- It's time for tax justice;
- Tax justice must be put into action to end poverty, inequality and climate change;
- MNCs, financiers and the very rich must pay their fair share of taxes;

- National and international systems that support tax avoidance and tax havens must be stopped;
- Governments must enforce fair, progressive, transparent and sufficiently resourced tax administrations;
- It's time for people of every country to receive out fair share in public services and social protection.

In signing this declaration, we call on world and community leaders, organisations and people to join together to take action. We demand that governments deliver tax justice now
http://gatj.org/

Key players
African Tax Administration Forum (ATAF) http://www.ataftax.net/en/
Organisation for Economic Development & Cooperation (OECD) www.oecd.org
OECD - BEPS Action Plan http://www.oecd.org/ctp/BEPSActionPlan.pdf
Tax Inspectors without Borders http://www.governanceanddevelopment.com/2012/05/tax-inspectors-without-borders.html
The UN Committee of Experts on International Cooperation in Tax Matters is a subsidiary body of the UN Economic and Social Council and is responsible for keeping under review and update, as necessary, the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.
http://www.un.org/esa/ffd/tax/

Resources
Action Aid (2012) Calling time Why SAB Miller should stop dodging taxes in Africa
http://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf
Action Aid (2013) Sweet Nothings The human cost of a British sugar giant avoiding taxes In Southern Africa
Africa Development Bank (ADB) & Global Integrity Institute (2013) Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980-2009
http://www.gfintegrity.org/storage/gfip/documents/reports/AfricaNetResources/gfi_afdb_iffs_and_the_problem_of_net_resource_transfers_from_africa_1980-2009-web.pdf

List of tax justice campaign websites
Global Alliance for Tax Justice http://gatj.org/
Tax Justice Network www.taxjustice.net
Christian Aid www.christianaid.org.uk
ActionAid www.actionaid.org.uk

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