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Country Report: Kenya

Annex C to SEO Report “Strengthening Tax Systems”

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List of abbreviations

AFRITAC	African Technical Assistance Centre (IMF)
ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CbCR	Country-by-Country reporting
CMAAT	Convention on Mutual Administrative Assistance in Tax Matters
CbC MCAA	Multilateral Competent Authority Agreement on The Exchange of Country-by-Country Reports
CD	Capacity Development (the combined efforts of technical assistance, training, conferences and other knowledge sharing activities)
CPIA	Country Policy and Institutional Assessment
CSO	Civil Society Organisation
DRM	Domestic resource mobilisation
DTT	Double taxation treaty
EOIR	Exchange of information on request
FDI	Foreign Direct Investment.
GDP	Gross Domestic Product
IBFD	The International Bureau for Fiscal Documentation
IFB	Inclusive Framework on BEPS
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department of the Dutch MFA
KRA	Kenyan Revenue Authority
LoB	Limitations on benefits
MAP	Mutual Agreement Procedure
MFA	Dutch Ministry of Foreign Affairs
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
MoF	Dutch Ministry of Finance
MNE	Multinational enterprises
NGO	Non-governmental organisation
NTCA	Netherlands Customs and Tax Administration (<i>“Belastingdienst”</i>)
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
SFI	Special Financial Investments
SSA	Sub-Saharan Africa
TA	Technical assistance
TADAT	Tax Administration Diagnostic Assessment Tool
TIEA	Tax information exchange agreements
TIWB	Tax Inspectors Without Borders
ToC	Theory of Change
ToR	Terms of Reference
TP	Transfer Pricing
UN	United Nations
UN-DESA	United Nations Department of Economic and Social Affairs

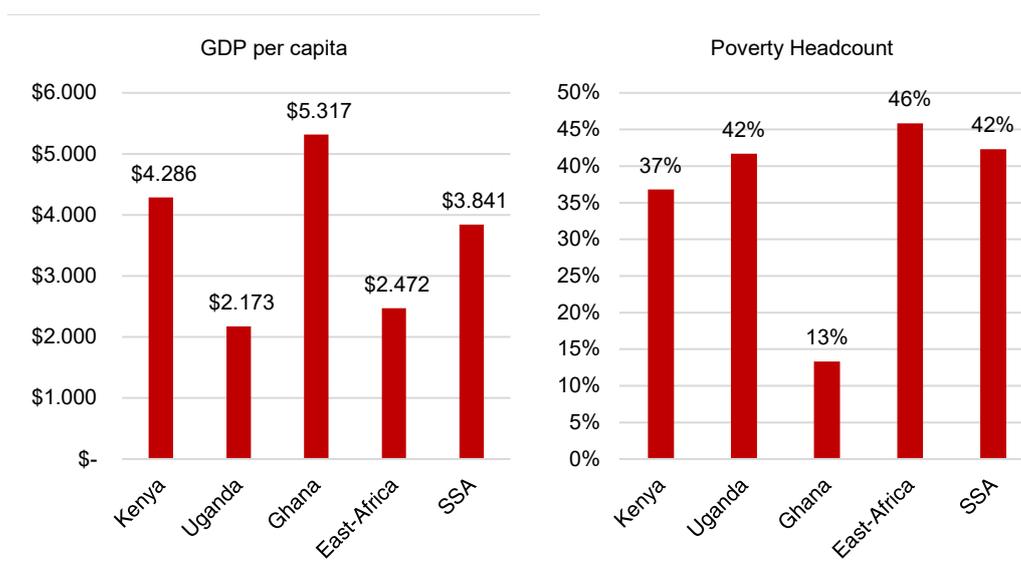
1 General Background

Kenya is a lower-middle-income country in East Africa with a higher income level and a lower poverty headcount than other countries in the region. Its tax-to-GDP ratio is relatively high for the region, but has been declining since 2014. Foreign direct investment into the country is relatively low and has been more or less stable in recent years.

1.1 Economic background¹

Kenya is a lower-middle-income country in East Africa with a higher income level and lower poverty headcount than in the region and Sub-Saharan Africa (SSA) on average. The country's GDP per capita is twice as high as Uganda and other countries in East Africa (see Figure 1.1a). Kenya's GDP per capita is approximately 10 percent higher than the average in Sub Sahara Africa, but lower than that of Ghana. Similarly, Kenya's poverty headcount (i.e. the share of people that live on less than USD 1.90 a day) is the second lowest of the displayed countries and regions (see Figure 1.1b). However, Uganda aside, the differences between the poverty headcount rate across countries are smaller than the differences between GDP per capita.

Figure 1.1 Kenya performs relatively well on economic performance indicators



Source: World Development Indicators (World Bank, 2020). GDP per capita (2017-19 average; PPP; current international \$). Poverty headcount ratio at \$1.90 a day (latest available; 2011 PPP; % of population). The numbers for East-Africa and the SSA are calculated based on a weighted average.

¹ Although Kenya participates in IMF's General Data Dissemination System (GDDS), the IMF (2018) notes that there are still shortcomings in the data quality: "Data provision is broadly adequate for surveillance and program monitoring, although it has some shortcomings because of capacity constraints".

1.2 Revenue collection

The tax-to-GDP ratio in Kenya is relatively high for the region, but has been declining since 2014. As Figure 1.2 shows, tax revenues in Kenya averaged 16 percent during the last decade, compared to only 11.5 for its neighbour Uganda. However, the Kenyan tax-to-GDP ratio has been falling in recent years: from 16.8 percent in 2014 to 15.8 percent in 2017. While not shown in the chart, IMF (2020) estimates that the tax ratio declined further to 15.1 percent in 2018/2019 and is expected to drop to 13.9 percent in 2019/20 and 13.7 percent in 2020/21.

According to economic experts on Kenya, one of the reasons for the fall in tax revenues has been a structural transformation of the economy: from manufacturing to agriculture and services.² In particular, the share of manufacturing, traditionally one of the main sources of corporate income tax, has been shrinking. At the same time, the share of agriculture and services, both of which are typically lightly or less consistently taxed, have increased.

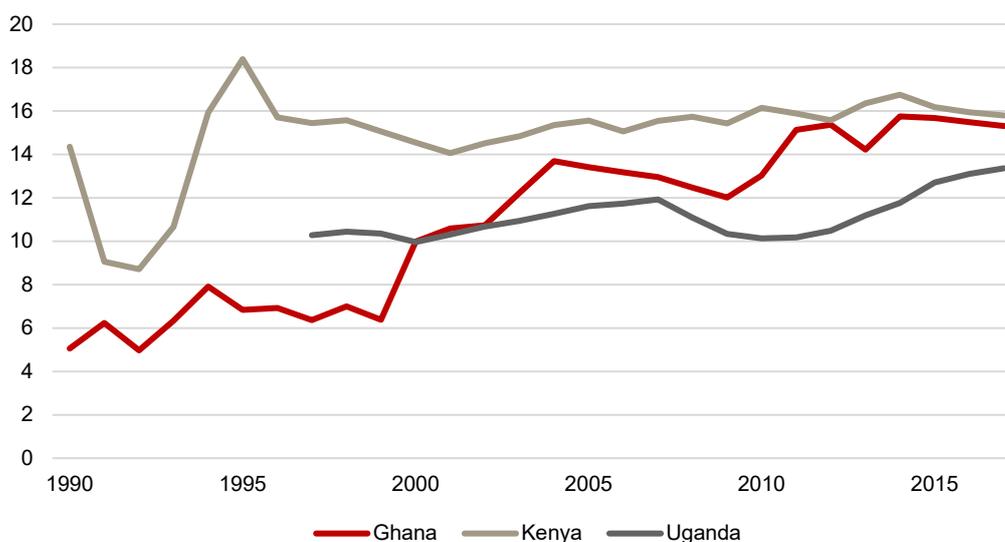
The second reason is the increased use of tax exemptions. According to a macro-economic expert on Kenya, tax exemptions were always prevalent in Kenya, but their prevalence increased in recent years. In the expert's view, some of these exemptions are there to attract FDI, but most are used as a form of industrial policy focused on the domestic market. Exemptions for foreign companies are less prevalent, possibly because imports and exports are a small part of the economy (5-6 percent of the economy) and FDI is relatively low (as described below). One estimate is that the costs of tax exemptions are as high as 6 percent of GDP. According to a stakeholder from the Netherlands embassy, there has been a push by the IMF and the World Bank to reduce tax exemptions as a way of reducing the country's fiscal deficit. This advice partly informs the tax reforms that Kenya has been undertaking in recent years.

In response to COVID-19, the Kenyan government recently installed a large package of tax cuts. According to a Kenyan policy expert, these were considered the most practical and politically acceptable way of providing support. For example, the VAT rate was reduced from 16 to 14 percent, while the corporate income tax rate and the personal income tax top bracket both fell from 30 to 25 percent. According to one estimate, the revenue costs of these measures were larger than the entire health care budget. It was also noted that removing the top rate for PIT only helps the relatively "better-offs". However, according to one tax expert it is likely that these measures will be temporary, as Kenya's VAT rate was already below the rates of other countries and other countries have not lowered their rates.

Along with the recent tax cuts, some proposals were made to reduce tax exemptions and introduce new taxes, in line with IMF advice. For example, the authorities proposed a new alternative corporate income tax amounting to 1.2 percent of GDP and a tax on digital services amounting to 1.5 percent of GDP.

² The relative importance of agriculture, forestry and fishing increased from 20 percent of the country's GDP in 2006 to 34 percent in 2019. During the same period, the relative importance of manufacturing decreased from 13 to 8 percent.

Figure 1.2 Kenya has the highest tax-to-GDP ratio of the selected case study countries

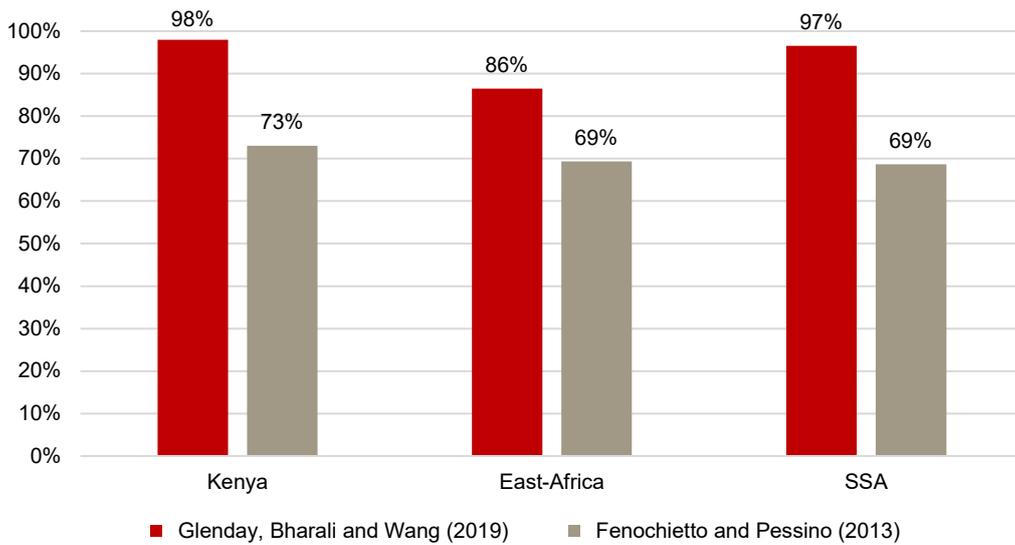


Source: World Revenue Longitudinal Data set (WoRLD), IMF. Tax revenue as a share of GDP.

Econometric estimates suggest that Kenya’s ‘tax effort’ (ratio between actual and potential revenue) is higher than for some other countries in the region. Figure 1.3 displays two estimates of tax effort. The estimate by Glenday, Bharali and Wang (2019) calculates tax effort in the broadest sense, by econometrically estimating the main determinants of revenue, and then using these to project potential revenue. Tax effort is subsequently calculated as actual revenue as a share of potential revenue. Based on this measure of tax effort, it appears that the Kenyan authorities manage to collect revenues near to their full potential. Overall, this level of tax effort is comparable with the Sub Sahara African (SSA) average. The second estimate of tax effort was made by the IMF (Fenochietto and Pessino, 2013) and defines tax effort as the ratio between actual revenue and ‘tax capacity’, where the latter is defined according to the tax structure of a country (e.g. tax rates multiplied by the relevant tax base). Given Kenya’s tax structure, this estimate suggests that the Kenyan authorities were able to collect 75 percent of their potential revenue back in 2011. Kenya’s tax effort is herewith similar to the regional averages, but lower than Ghana’s. Overall, these estimates suggest that a relatively large share of tax revenue (25 percent) remained uncollected (given the fiscal structure at the time).³

³ The tax-effort calculations from Glenday Bharali and Wang (2019) are available for more countries than the calculations from Fenochietto and Pessino (2013). Moreover, the latter data are also only available for 2011. We display both calculations since the tax-effort ratios from Glenday, et al. (2019) are to our knowledge, the most recent and comprehensive available, whereas the ratios from Fenochietto and Pessino (2013) are easier to interpret and start from the current tax structure.

Figure 1.3 Kenya's tax effort is near its potential and similar to other countries in the region



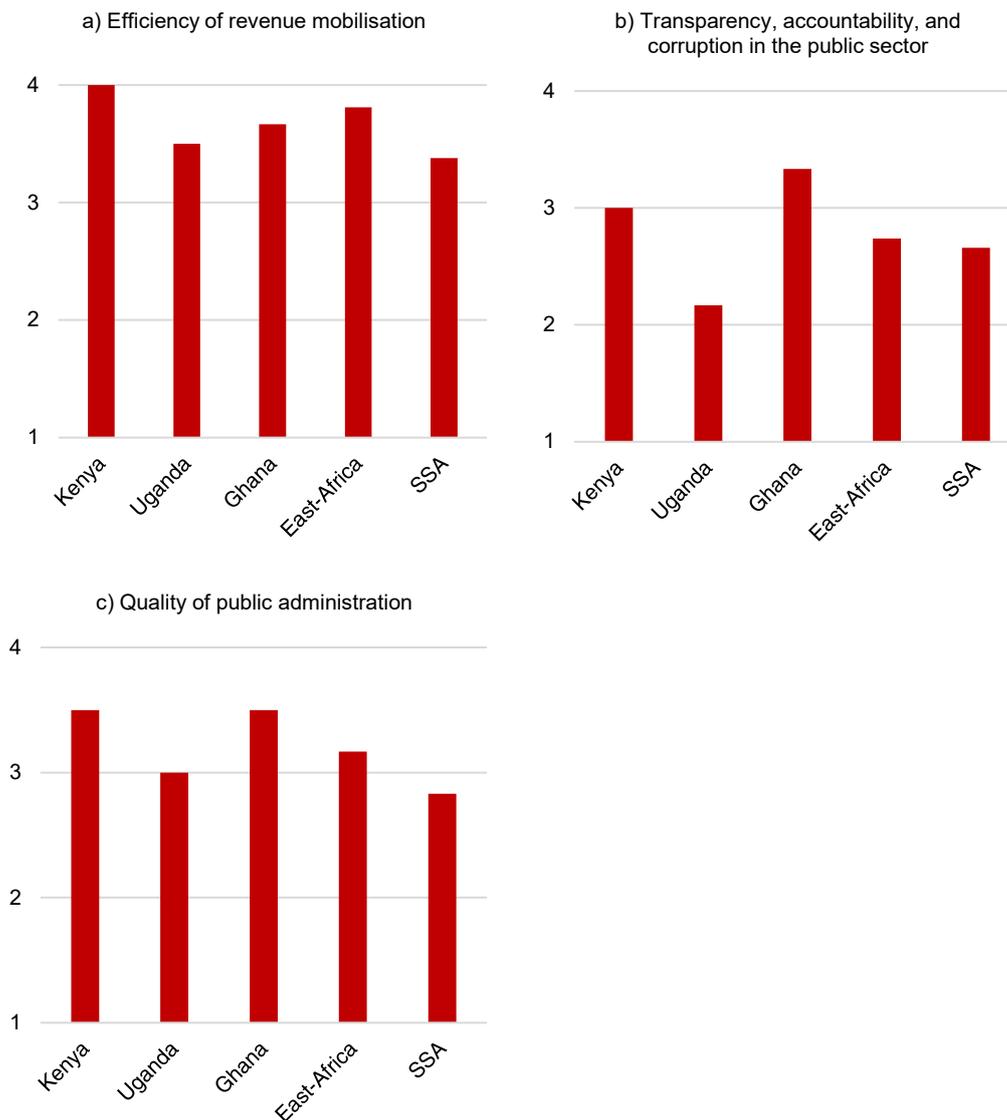
Source: Glenday, Bharali & Wang (2019) and Fenochietto and Pessino (2013). Regional averages concern unweighted averages.

1.3 Governance indicators

World Bank governance indicators for Kenya suggest that the country performs better than average, particularly with respect to their efficiency of revenue mobilisation.⁴ Kenya scores between 3 and 4 points on a six-point-scale on the CPIA ratings as exemplified in Figure 1.4. These ratings are well above the (modest) average ratings of all Sub Sahara African countries included in the CPIA assessment. Moreover, Kenya scores better than the East Africa average, which itself is higher than the SSA average. With regard to 'efficiency of revenue mobilisation' and 'quality of public administration', Kenya performs the best of all displayed countries and regions. However, in terms of 'transparency, accountability and corruption', Kenya scores lower than Ghana. Generally speaking, SSA countries perform best on 'efficiency of revenue mobilisation' and worst on 'transparency, accountability and corruption.' These ratings show little variance over time (not shown in the figure).

⁴ Country Policy and Institutional Assessments (CPIA) are carried out annually by the World Bank to measure and rank the ability of countries to make effective use of aid. CPIA ratings are used by the Bank to calculate country performance ratings, and play an important role in determining the Bank's allocation of aid.

Figure 1.4 Kenya provides a relative good implementation environment, especially on efficiency of revenue mobilisation



Source: Data from database: Country Policy and Institutional Assessment, Last Updated: 07/14/2020. CPIA efficiency of revenue mobilisation rating; CPIA transparency, accountability, and corruption in the public sector rating; CPIA quality of public administration rating (1=low to 6=high). Averages for 2018-2020. Regional averages concern unweighted averages.

1.4 Foreign direct investment

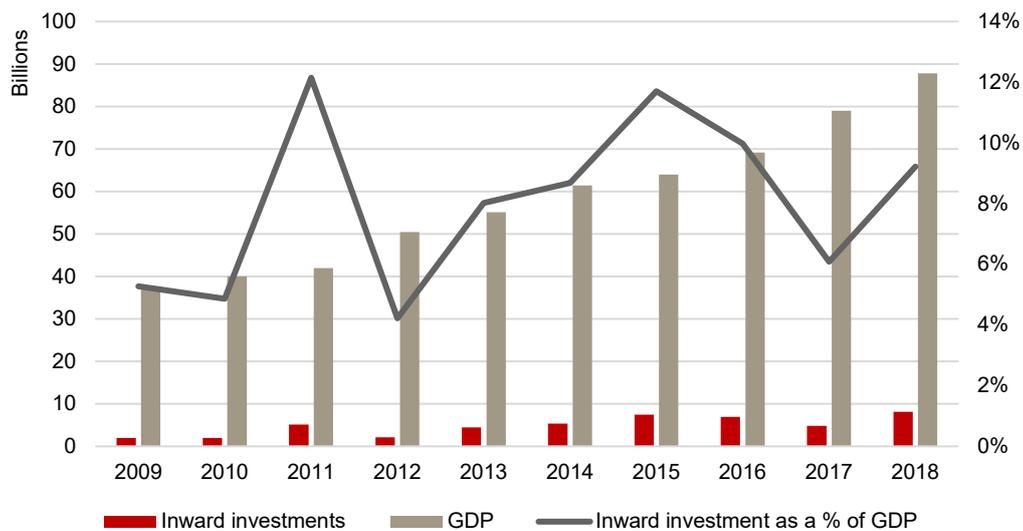
Foreign Direct Investments (FDI) in Kenya has grown, but remains relatively low as a percentage of GDP. The FDI stock in Kenya more than quadrupled from nearly USD 2 billion in 2009 to around USD 8 billion in 2018 (see Figure 1.5). However, compared with our other case study countries, FDI into Kenya is still relatively low; both in absolute terms and relative terms (See Table 1.1) Moreover, the FDI stock in Kenya remained more or less constant since 2015, as reflected in a decreased FDI-to-GDP ratio.

Table 1.1 Kenya is less dependent on FDI than other case study countries

	Total FDI stock in USD billions	Total FDI stock per capita	Total FDI stock in percent of GDP
Kenya	\$ 8.1	\$ 157.54	13%
Uganda	\$ 9.3	\$ 217.54	23%
Ghana	\$ 15.8	\$ 542.56	31%

Source: Coordinated Direct Investment Survey (CDIS), IMF for data on *Inward foreign direct investment*. Data for SSA, Ghana and Uganda are based on the inward data as reported by the respective country, whereas data for Kenya are based on inward data as reported by the respective counterpart economy.

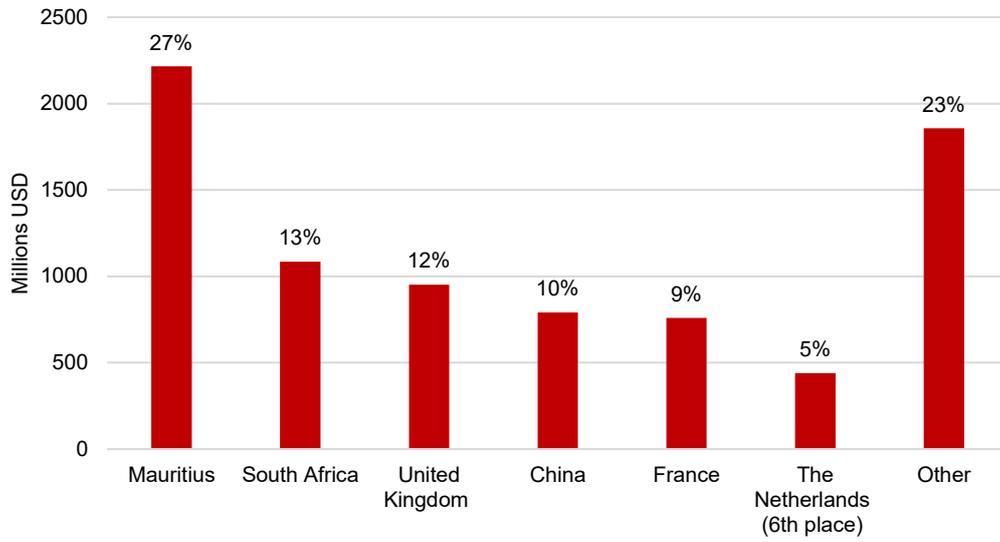
Figure 1.5 The FDI stock in Kenya has grown, but remains relatively low



Source: Coordinated Direct Investment Survey (CDIS), IMF for data on *Inward foreign direct investment*. World Development Indicators (World Bank, 2020) for data on *GDP*.

Mauritius held the largest foreign direct investment position in Kenya in 2018. Based on CDIS data, Mauritius held more than a quarter of the FDI position in Kenya: more than US 2.2 billion in 2018. Mauritius, a country of 1.3 million people, can be found on the EU list of non-cooperating jurisdictions and is well-known for being a conduit country. The Netherlands is in 6th place with an FDI position of USD 439 million and a share of 5 percent.

Figure 1.6 Mauritius was the largest foreign direct investor in Kenya in 2018



Source: Coordinated Direct Investment Survey (CDIS), IMF. Inward foreign direct investment (position/stocks), measured in millions of USD. Based on outward investments reported by the counterpart economies.

2 Capacity building activities

2.1 Bilateral activities

Table 2.1 The Netherlands financed 8 bilateral activities in Kenya from 2013 to 2019

Activity	Programme	Year	Organisation
Exchange of Information	Strengthening tax systems	2014	MoF/NTCA
Tax treaties maintenance and Administration (seminar in Amsterdam)	Capacity Building in Taxation	2014	IBFD
International taxation: principles and application in the Kenyan context	Capacity Building in Taxation	2015-2016	IBFD
Change management	Strengthening tax systems	2016	MoF/NTCA
TADAT assessment	Strengthening tax systems	2016	MoF/NTCA
Offshore Entities – Past, Present and Future. (seminar in Amsterdam)	Capacity Building in Taxation	2016	IBFD
Congres change management	Promoting DRM in partner countries	2018	MoF/NTCA
Tax payers' service	Promoting DRM in partner countries	2018	MoF/NTCA

Source: SEO Amsterdam Economics based on programme documentation.

2.2 Multilateral programmes

The contribution of the Netherlands towards multilateral programmes is generally speaking not earmarked (see Table 2.2). Only with respect to the UN-DESA programme, the Netherlands contributed financially to a specific subset of activities (i.e. training in tax treaty negotiations, tax treaty administration, and in policies to prevent base erosion and profit shifting). The contribution to the IMF's thematic funds is generally speaking not earmarked, but the Netherlands asked the IMF to pay specific attention to anti-money laundering practices. With respect to the RMTF, the Netherlands asked the IMF to put more emphasis on donor coordination, whilst the funding remained formally not earmarked. Moreover, 70 percent of the Dutch funding to the WB was earmarked to be devoted to Central Africa and the MENA region, but nothing of the remaining funding was earmarked to specific activities in Kenya. Nevertheless, the Netherlands often took part in the steering committee of the programme in order to have a voice in determining the final activities.

Table 2.2 The Netherlands supported 13 multilateral programmes in Kenya from 2013 to 2019

Name	Organisation	Theme	Period
Thematic Funds; TPA-TF ⁵	IMF	TA	01-07-2009 / 30-06-2013
Thematic Funds; MNRW-TF ⁶	IMF	TA	01-07-2009 / 30-06-2013
African Technical Assistance Centres (AFRITACs)	IMF	Support to regional (African) organisations on Tax	01-07-2009 / 31-06-2013
AFRITAC Core	IMF	Support to regional (African) organisations on Tax	01-06-2015 / 31-05-2019
Revenue Mobilisation Trust Fund (RMTF)	IMF	TA	01-05-2016 / 30-06-2022
ATAF	South African Revenue Service	Support to regional (African) organisations on Tax	01-11-2010 / 30-06-2014
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2014 / 31-12-2015
TADAT Tax diagnostics	IMF (and World Bank)	TA	01-01-2014 / 31-12-2018
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2017 / 31-12-2020
Tax and development	OECD	Developing countries participation BEPS	01-01-2015 / 31-12-2017
BEPS and TIWB support	OECD	Developing countries participation BEPS	01-01-2017 / 31-12-2020
Capacity building in DRM	UN-DESA	TA	01-11-2017 / 31-12-2019
Global tax program	WB	TA	01-07-2018 / 30-06-2022

Source: MFA Assessment Memorandums (“beoordelingsmemoranda”) of the respective programmes

2.3 Selected case studies

At the request of IOB, SEO selected as case studies only those **bilateral CD-activities with a focus on international taxation**. As Tables 2.1 and 2.2 show (and Chapter 3 of the main report describes), the Netherlands also devotes a substantial share of their budget to capacity development in the area of domestic tax policy and tax administration (e.g. through the NTCA, and the various multilateral funds). However, at the explicit request of IOB, these were not selected as case studies as this evaluation needed to focus on (the coherence of) the different Dutch policies in the area of international taxation. In principle, SEO selected all of these bilateral CD-activities in the area of international taxation, except for a few cases where insufficient information was available or the activity was very small. In addition, we analysed Kenya’s involvement and position with respect to OECD BEPS (including its tax treaty policy). Although these matters are not CD-activities, they

⁵ Formerly referred to as one of the Topical trust funds (TPA)

⁶ Formerly referred to as one of the Topical trust funds (MNRW)

do relate to the multilateral OECD programmes and therefore we treat them as “case studies” for the purpose of this evaluation.⁷

Table 2.3 Selected “case studies” in Kenya

Name	Organisation	Years	Type
CD activities			
Training on International Taxation (Part I and Part II)	IBFD	2015-2016	Bilateral
Transfer Pricing	OECD & ATAF (via TIWB)	2017-2018	Bilateral
Offshore entities – Seminar	IBFD	2016	Bilateral
Other			
Analysis of Kenya’s tax treaty policy (including MLI and DTT with the Netherlands)	Kenyan National Treasury & Kenyan Revenue Authority	-	-
Analysis of Kenya’s involvement in BEPS	Kenyan National Treasury & Kenyan Revenue Authority	2013-present	-

Source: SEO Amsterdam Economics

⁷ This approach does therefore also not intend to make a selection that is fully representative of the Dutch support in the field of taxation, but is in line with the desires of IOB.

3 Case Study 1: Involvement in BEPS

Kenya is engaged in many initiatives on international cooperation in tax matters, including the Inclusive Framework on BEPS, the Global Forum, the Convention on Mutual Assistance and the UN committee. Stakeholders outside the government however are somewhat skeptical of Kenya's participation in BEPS processes.

3.1 Kenya's participation in BEPS-related fora

Kenya is engaged in many initiatives on international cooperation in tax matters that are relevant for the implementation of BEPS standards. This Section reviews Kenya's participation in the following platforms or organisations:

- G20/OECD initiatives such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI") and Inclusive Framework on BEPS ("IFB");
- The Global Forum on Transparency and Exchange of Information for tax Purposes ("Global Forum");
- Convention on Mutual Administrative Assistance in Tax Matters ("CMAAT");
- Multilateral Competent Authority Agreement on The Exchange of Country-by-Country Reports ("CbC MCAA");
- UN Committee of Experts on International Cooperation in Tax Matters ("UN Committee");
- Other regional initiatives such as The African Tax Administration Forum (ATAF).

Inclusive Framework on BEPS

Kenya decided to join the Inclusive Framework on BEPS (IFB) as one of its 137 members (OECD, 2019a). The OECD/G20 BEPS Project delivers solutions for governments to close the gaps in existing international rules that allow corporate profits to « disappear » or be artificially shifted to low or no tax environments. In response to the G20's call for broad and consistent implementation of the BEPS package, the Inclusive Framework was established in June 2016. By joining IFB Kenya committed to implementing the four BEPS minimum standards that address critical issues like tax treaty shopping, tax rulings, harmful preferential tax regimes, transparency on multinationals' global operations and improved dispute resolution mechanisms. The Inclusive Framework goes beyond standard-setting and also aims for effective implementation, with a peer review and monitoring framework that will enhance a level-playing field.

The following measures are taken on by IFB to be implemented by its members:

1. The transparent use of tax rulings through exchange of information – the 2018: Peer Review Report concluded that Kenya has all necessary legal basis for spontaneous exchange of information on this matter (OECD, 2019b)
2. Limiting opportunities for treaty-shopping by signing on to the MLI – Kenya signed the MLI on 26th of November 2019 but the convention has not yet been ratified,
3. The IFB review and curtail harmful tax practices of the jurisdictions e.g. preferential tax regimes, such as patent boxes.
4. The transfer pricing Country-by-Country reporting to the parent entity's tax administration.

5. Measures against so-called “cash boxes”, entities designed to hold valuable assets but which have little, if any, economic substance, can no longer earn disproportionately high rates of return.

According to stakeholders at the National Treasury and KRA, Kenya decided to join the Inclusive Framework because “if you are not on the table, you are on the menu.” They noted explicitly that they wanted to be part of the conversation and the implementation. One of the reasons is that many MNEs are active in Kenya, and changes in tax laws in other countries as a result of IFB discussions will also affect Kenyan taxing rights. They also felt that Kenya is given the opportunity to raise issues specific to the Kenyan situation (e.g. interaction with domestic tax law). Another reason to be actively involved in international discussions is that it facilitates implementing actions. An example is the OECD model treaty: if Kenya had been involved in the development of this model it would have been easier to implement: “sometimes we may not implement fully because we don’t understand it fully.”

Kenya’s involvement in the IFB is mainly through working parties, which the authorities consider important and effective. According to stakeholders from the National Treasury and the KRA, Kenya takes its participation in these working parties seriously: *“even if you are not there at the working party, you still have to implement it later”*. They also consider their participation to be effective. For example, the Kenyan Export Processing Zone was not classified as a harmful tax practice because Kenyan authorities could demonstrate that its tax regime was not harmful. A Kenyan tax expert (outside the local governmental sphere) mentioned that Kenya had increasingly built up capacity since the second round of OECDs BEPS to better deal with international taxation issues and to engage more effectively in IFB working parties. Until the Kenyan government started reorganising the international tax office recently, Kenya had a capable team in place. During the reorganisation, the unit was moved to the criminal section (tax frauds) and the team lost some highly experienced officers. According to the tax expert, this shifted priorities in the wrong direction and weakened the overall capacity of the international tax office.

Global Forum on Transparency and Exchange of Information for Tax Purposes

Since 2010, Kenya is one of 161 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter Global Forum). The Global Forum is the leading international body working on the implementation of global transparency and exchange of information standards around the world. Kenya is a member of the steering group and participates in its activities and meetings.

Kenya has been reviewed by peers on implementation of EOIR standards (phase 1 – legal framework and phase 2 - review of EOIR in practice⁸) and received a general rating “largely compliant”⁹. The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information (AOI). The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party.

⁸ OECD (2016) and OECD (2013)

⁹ <http://www.oecd.org/tax/transparency/GFratings.pdf>

All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed, as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The Kenyan authorities expect their participation in the Global Forum to have a significant impact on revenues in the coming years. EIOR is expected to improve the information base of the KRA with information from potentially 160 other jurisdictions where the same MNEs are operational. According to a Kenyan tax expert, the KRA is not yet extensively engaged in EOIR in practice. Since the statistics of the EIOR are not publicly available it is difficult to draw a full picture. Nevertheless, cases of exchange of tax information exist with Germany and the UK but not with the Netherlands. This is largely explained by not having a legal framework in place (e.g. lack of ratification of the 2015 DTT and the CMAAT). Moreover, Kenya does not have a separate office for the exchange of information. All requests are proceeded by the international tax office that deals with all DTT-related issues.

Convention on Mutual Administrative Assistance in Tax Matters (CMAAT)

Kenya signed the CMAAT on 08-02-2016 but it has not yet been ratified, so it has not entered into force. The CMAAT, developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010, is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. The CMAAT provides for a legal framework on exchange of information for tax purposes, the assessment and collection of taxes and all possible forms of administrative co-operation between states in tax matters. 137 jurisdictions participate in the CMAAT as of September 2020, including 17 jurisdictions covered by territorial extension.

Agreement on the Exchange of Country-by-Country Reports (CbC MCAA)

Kenya has not signed the CbC MCAA.¹⁰ However, as a member of the IFB, it is expected to implement the transfer pricing Country-by-Country reporting to the parent entity's tax administration. IFB provided two phases of peer review of the Kenyan system of CbC reporting (OECD, 2019C). The peer reviews showed that Kenya does not yet have legislation in place for implementing the BEPS Action 13 minimum standard, meaning that MNEs do not yet have a filing obligation for a CbC-report in Kenya. In order to improve its CbC-framework, the peer review recommended Kenya to take the following four steps:

1. Implement a domestic legal and administrative framework to impose and enforce CbC reporting requirements as soon as possible.
2. Install and maintain qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which Kenya has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.

¹⁰ <https://www.oecd.org/tax/beeps/CbC-MCAA-Signatories.pdf>

3. Implement processes or written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference (OECD, 2017) relating to the exchange of information framework ahead of the first exchanges of information.
4. Ensure that the appropriate use condition is met ahead of the first exchanges of information.

UN Committee

Kenya also participates in the work of the UN Committee of Experts on International Cooperation in Tax Matters. The UN Committee is responsible for the UN Model Double Taxation Convention and also provides guidelines for developing countries on specific issues of international tax cooperation, including BEPS. A delegated person from Kenya (Mr. George Obell) is one of 25 members of a current team of the UN Committee. He does not represent the government of Kenya, however his participation demonstrates Kenya's commitment to international tax cooperation.¹¹

Other regional initiatives

According to a local expert, the contribution of the Task Force on Tax and Development and ATAF is fairly limited. The Task Force (established in 2010) “aims to benefit developing countries through putting more resources into the tax area, assisting them in accessing the information necessary to improve how their tax regimes raise revenue, and to strengthen good governance”. However, in the view of the expert, the task force is of little use for Kenya. From the outside it looks promising, but you do not see much on the ground (“it is doing absolutely nothing”). In order for Kenya to truly benefit from transboundary cooperation, it should devote more effort to regional block initiatives like the EAC, where government authorities can share best practices among its peers. The expert also mentions the example of Rwanda, which has been able to build up its political position as a regional leader and become more visible on the international stage through its involvement in regional cooperatives.

3.2 Stakeholder views on Kenya's role in BEPS

Stakeholders at the Kenyan National Treasury and the KRA indicate that Kenya is very active in the discussions about international tax issues, and the implementation of BEPS actions. According to them, Kenya incorporates the BEPS provisions that it deems beneficial to the Kenyan economy, especially those that directly result in improved domestic revenue mobilisation (e.g. Transfer Pricing): “If we don't follow international practice, we may lose a lot of revenue.”

Kenya accepted all minimum BEPS standards and expects this to have an impact on revenues. As described above, Kenya had only two reservations when signing the MLI. The minimum standards (BEPS Actions 5, 6 13 and 14) were prioritised, as well as BEPS Action 1 (digital economy) and Action 7 (PE). Permanent establishment rules in particular are seen as crucial, although they are not part of the minimum standards. According to the authorities, “Artificial avoidance of PE status is where we suspect the largest revenue leakage. Robust rules for PE are

¹¹ <https://www.un.org/esa/ffd/tax-committee/tc-members.html>

crucial.” The same goes for transfer pricing regimes, where Kenya has intensified capacity building efforts (see Case Study 4).

Stakeholders outside the government (e.g. private sector and academia) are somewhat skeptical of Kenya’s participation in BEPS processes. One local tax expert described Kenya’s position on BEPS as “in line with its general policy: It tries to enter the space without fully committing itself”. For example, Kenya has signed the MLI, but has not ratified it and “it is not likely that it will ratify it soon”. Similarly, this stakeholder considered Kenya’s membership of the Inclusive Framework and participation in the Global Forum as “more the appearance of active participation than real activity”. According to the local tax expert, “Kenya has not approved any legislation nor has it implemented any measure with regard to BEPS”. For instance, business registry is still seen as “quite a mess”, with beneficial ownership not yet being fully implemented. According to the Netherlands embassy, Kenya has been working on the Beneficial Ownership Registry, however it just announced to all affected companies to immediately file the required information. As some other stakeholders noted, the relatively low speed at which these recommendations are inherited may be due to the fact that Kenya also wants to protect its own multinationals that are engaged in outward FDI. Stakeholders from the Kenyan National Treasury and the KRA mentioned that a part of the delay is also due to the fact that a lot of BEPS provisions will also be included in Kenya’s domestic tax law. This new bill has been sent to parliament in April 2020 and is targeted to be ratified by the end of 2020.

These same stakeholders argue that Kenya’s approach is based on national self-interest. In their view, Kenya is only willing to fully commit to those aspects where benefits are clear: “Only those actions that clearly benefit the country will be adopted”. At the same time, the authorities are also seen as wanting to become visible at the international level, along with a realistic view of its own relatively limited possibilities to influence international processes. According to one interviewee, “Kenya seeks to strengthen its position in the African continent as a reliable state strongly involved in international tax policy”.

Multiple stakeholders mentioned the short-term focus of the Kenyan authorities. As a stakeholder from a Big-4 firm noted, “The authorities have a gaping fiscal deficit, hence a short-term view to collect taxes rather than a long-term perspective of international cooperation and institutional modernisation”. For example, the official argument of the government is that there will be a new Income Tax Act, where all changes will be incorporated – including a new chapter on transfer pricing. However, adopting new legislation is a difficult and lengthy process. By means of illustration, a draft bill was released more than a year ago, and submitted to parliament in May 2020. It was subsequently withdrawn when the government realised that none of the changes discussed over the last 1-2 years had been included in the draft bill. The transfer pricing chapter in particular did not seem to make a lot of sense, as many key issues were left out (for instance, threshold values, definition of low-tax jurisdiction, arm’s length principle). A tax law expert noted that “it is quite possible that the new act will not really address any of the BEPS actions.” This

contradicts the position of the authorities that all BEPS provisions will be in place after the adoption of the new Corporate Income Tax law.¹²

Limited capacity and limited access to data are two factors that are considered barriers to further progress on BEPS. This was mentioned by local stakeholders from the private sector as well as academia. In their view, the KRA has an understanding of the domestic economy, but their capacity in international taxation is weaker. While their capacity with regard to transfer pricing seems to have improved (as described in Case Study 4), one stakeholder noted that “the KRA does not know the tools multinationals employ for tax planning.” Moreover, the KRA was seen as not having sufficient access to data on transactions between related entities. This lack of capacity could explain why the KRA is possibly focusing too much on smaller domestic tax payers instead of large international companies: “the KRA has become so strong that it has started bullying companies, SMEs in particular.”

Stakeholders point to a need for more capacity building at KRA, but with more emphasis on South-South cooperation. A Kenyan tax expert noted that training should be more embedded in the local structure. In the expert’s view, this should not be limited to KRA staff, but should be extended to other professions (accountants, lawyers), in order to bring them “on eye level” with the KRA. The authorities themselves noted that they would be interested in more capacity development in international taxation, but with a long-term perspective (not one-off courses).

Lack of knowledge at parliament is seen as another important implementational barrier. According to a stakeholder from a Big-4 firm in Kenya, the finance committee in parliament has only limited knowledge on tax matters. “They are not really a match to the KRA Policy Department and the Treasury”. It is therefore considered likely that the new act, once re-submitted, will be approved without major changes.

The lack of decisive action has caused the private sector to suffers from a lack of certainty. According to a private sector stakeholder, the “very unstable policy environment” implies high transaction and compliance costs for the private sector. According to one interviewee, this is deliberate: “Tax uncertainty is used as a tool by the KRA to exert pressure on taxpayers.”

According to multiple stakeholders, there is a lot of public debate on tax exemptions and increasingly on tax treaties in Kenya. CSOs are actively shaping this debate. Based on a recent press release of Tax Justice Network Africa (TJNA)¹³, TJNA and Katiba Institute (KI) moved to court in October 2020 to challenge ten treaties, including the one with the Netherlands.¹⁴ According to one stakeholder, people take it as “Gospel truth” that all companies engage in tax avoidance, which is not always backed by evidence. A stakeholder from a Big-4 firm in Kenya mentioned that there is a certain trend in the public debate (fueled by authorities) that sees tax

¹² The Corporate Income Tax law is currently (September 2020) being overhauled, and a major revision will soon be discussed in parliament. Some of the provisions (e.g. on transfer pricing) were implemented in earlier amendments to the tax law. The new proposal has incorporated most provisions, and has been sent to parliament in April, but then had to be amended because of some additions in response to the COVID-crisis. By the end of the year, the bill is expected to be accepted by parliament.

¹³ <https://taxjusticeafrica.net/wp-content/uploads/2020/09/CSO-go-back-to-court-over-Kenyan-DTAs.pdf>

¹⁴ The other DTTs include the ones signed between Kenya and the following countries: Iran, Kuwait, Seychelles, South Africa, Qatar, Korea, The United Arab Emirates, India and Mauritius.

avoidance everywhere: “If a business that has been profitable in year 1 ceases to be profitable in year 2, it does not necessarily engage in tax avoidance”.

According to others, there is not much debate in Kenya on tax avoidance by multinationals, or the BEPS process more generally. One reason, as noted by a stakeholder from an international organisation, is that the Kenyan economy is less dependent on international trade and investment, with a low share of imports, exports and FDI in GDP. Another reason however, as noted by various stakeholders, could simply be a lack of information. In their view, the Kenyan government is reluctant to release financial information. As one stakeholder noted, “Freedom of information still faces various hurdles in Kenya in many instances, compared to other countries in East Africa and Sub-Saharan Africa”. In a recent press release, TJNA and KI also pinpointed this information asymmetry by stating that the Kenyan government should “initiate DTTs in a transparent manner according to the tenets of the constitution and involve parliament by providing a transparent cost benefit analysis of each DTT for the purposes of decision-making”. Nonetheless, according to the Netherlands embassy in Nairobi, Kenya has made considerable progress in terms of access to information.

According to a local tax expert, there are many flower companies in Kenya that would benefit from the 2015 DTT. This refers to both Dutch companies that would benefit from the attractive business climate provided by the DTT, as well as non-Dutch companies that would engage in treaty shopping. In the view of the tax expert, lobbying by these flower industries is the main reason for the development of the 2015 DTT. A DTT that would not be beneficial for Kenya as a whole. After signing, a DTT needs to be accepted by the parliament and is often checked by NGOs and civil societies. Their realisation of the 2015 DTT’s negative effect could potentially explain the delay in the 2015 DTT ratification. The interviewee noted at least one example of a flower company for which it was difficult to pinpoint the true ownership due to a complex business structure divided over multiple countries (including the Netherlands).

4 Case study 2: Kenya's tax treaty policy

4.1 Kenya's DTT network

The current double tax treaty network consists of 14 DTTs that are in force, 7 DTTs that are signed but not ratified, and 27 DTTs under negotiation (or initialed but not signed).¹⁵ Kenya's DTT with the Netherlands is one of the tax treaties that was signed but not yet ratified. Ten of these DTTs are as of November 2020 part of a lawsuit filed by the CSOs Tax Justice Africa (TJN-A) and Katiba Institute (KI) against the Kenyan government. According to a press release issued by both parties, Kenya's DTT network is "eroding the Kenyan tax base, but also aids money laundering and other illegal activities". Moreover, "the FinCEN files exposé points out how this emerging DTA network is aiding money laundering and other illegal activities that harm the Kenyan economy. Reports of how 53 Kenyan companies and individuals named in a leak of financial records submitted to the US Department of Treasury as having taken part in suspicious financial activity to the tune of an estimated USD 60 Billion should be cause for concern".¹⁶

Kenya's current treaty policy can be analysed on the basis of the most recent tax agreements and Kenya's MLI position. To illustrate, we analyse the DTTs with India and UAE in the box.

Box 1 Examples of recently negotiated DTTs

The most recent treaties concluded by Kenya provide a good example of the Kenyan tax treaty policy, in particular with respect to the BEPS actions. The latest DTT with India, signed in 2016 and entered into force on 2017-08-30, contains some solutions developed in the BEPS project but also demonstrates source-oriented policies of developing countries based on the provisions of the UN Model. On the one hand the DTT with India extends the definition of independent agent PE in accordance with the BEPS concept, and the mutual agreement provision is consistent with BEPS standards for elimination of double taxation. On the other hand, it does not include many solutions provided by the MLI.

The DTT with India is primarily a source-oriented treaty. It contains high withholding tax rates (10 percent) for passive incomes and taxation of fees for technical services. The definition of royalties includes payment for leasing equipment and taxation of other incomes at source. These provisions are based on the UN Model. It also contains some traditional pre-BEPS anti-avoidance provisions, such as beneficial owner provision applied in case of dividends, interest, royalties and fees for technical assistance, allowing source taxation on sale of shares of immovable property companies and general anti-avoidance rules based on Main Purpose Test (not consistent with the BEPS minimum-standard PPT clause).

Generally, the recent DTTs do not contain extensive anti-avoidance provisions. For example, the recent DTT with UAE (signed in 2011 and entered into force in 2017) includes only a beneficial owner clause applied to dividends, royalties and interests and does not contain any general anti-avoidance clause (no MPT nor PPT). This DTT, does not contain taxation of fees on technical services, and does not meet some international standards (e.g. on exchange of tax information). Kenya's domestic law does include a general anti-abuse provision (GAAR). However, the GAAR has not really been put into action. This seems mostly due to the fact that most disputes are solved behind closed doors.

¹⁵ Information from the website of the National Treasury of the Republic of Kenya

¹⁶ <https://taxjusticeafrica.net/wp-content/uploads/2020/09/CSO-go-back-to-court-over-Kenyan-DTAs.pdf>

4.2 Kenya's DTT with the Netherlands

RQ 7.1: What was the position of Kenya during negotiations on the inclusion of anti-abuse clauses in tax treaties with the Netherlands and why?

When we compare the DTT with the Netherlands signed in 2015 (hereafter: 2015 DTT) with the two examples above, the 2015 DTT is not very inclusive with respect to BEPS solutions. The 2015 DTT contains some source-oriented provisions including:

- Withholding taxes on dividends (10 percent when dividends are paid from Kenya and 15 percent when dividends are paid from the Netherlands; but it should be noted that companies that directly hold at least 10 percent of the capital of the dividend-paying company are exempted from WHT on dividends in the source state);
- Withholding taxes on interests (10 percent tax rate);
- Withholding taxes on royalties (10 percent tax rate) and;
- Relatively short period for a building site to be treated as a PE (9 months).

Nevertheless, DTT does not include a lot of source-oriented provisions based on the UN Model (e.g. taxation of leasing of equipment in the source country as a royalty, withholding tax on fees for technical services [the Protocol to 2015 DTT stipulates that such fees are taxed as business income or income from independent personal services] or other income taxed only in the country of residence).

Regarding administrative assistance provisions, the 2015 DTT provides for exchange of tax information in accordance with international standards, mutual agreement procedure supplemented by arbitration provision, and assistance in the collection of taxes. Although it contains part of the BEPS standards (e.g. concerning MAP), it does not provide any general tax avoidance clause or real estate clause of art. 13(4). As far as anti-avoidance provisions are concerned it contains a Main Purpose Test relating to dividends (art. 10(8)), interests (art. 11(8)) and royalties (art. 12 (7)).

According to the Dutch government, the main reason for the main purpose test in the DTT with Kenya was to reduce the risk of treaty abuse. As the Dutch Ministry of Finance explained in a letter to Dutch parliament:¹⁷

[T]he preparation of the negotiations with Kenya explicitly focused on any risks of treaty abuse. By including relatively high withholding taxes on dividends, interest and royalties in the Treaty and linking the reduction of national rates of withholding taxes to a main purpose test, the risk of treaty abuse is eliminated. For the record, it should be noted that the negotiations on the Treaty have taken place and have been finalised before the publication of the recommendations on potential treaty abuse made in the so-called G20 / OECD Base Erosion & Profit Shifting (BEPS) project.

While Kenya and the Netherlands signed the DTT in 2015, it has thus far not been ratified by Kenya. Formally the reason why the 2015 DTT was not ratified in Kenya was the failure from the Kenyan side to follow the correct internal ratification procedure (Dutch Ministry of Finance, 2020). According to a Kenyan tax expert, this had to do with the lack of a call for public participation, which is a prerequisite in the Kenyan ratification process. This procedure is a

¹⁷ Dutch Ministry of Finance, 2016: <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vko0h9r2razl>

constitutional requirement for all international treaties to be concluded by Kenya. Currently Kenya is considering to carry out a call for public participation to allow civil society to comment on the DTT. It is probably the only way to solve the deadlock situation with respect to ratifying the DTT. Kenya and the Netherlands did notify this DTT as a covered tax agreement, meaning that it is notified for the MLI and will be modified automatically by its provisions, once both the DTT and the MLI are ratified. Kenya and the Netherlands accepted the following MLI provisions that will modify the 2015 DTT: transparent entities, dual resident entities, PPT clause and change of preamble, most provisions concerning PE and modification of Article 9 (2) on transfer pricing corresponding adjustment. By signing the MLI (from the side of Kenya), the initial MPT clause in the DTT will be replaced by the BEPS minimum standard PPT.

According to an independent expert on the Kenyan tax treaty policy, it is part of the Kenyan (public sector) work culture to be somewhat cautiously active. Whenever a new international practice is developed, the Kenyan authorities often remain silent until they fully understand the process. In the meantime, they will take the necessary actions in order to “comply” (to make sure that they are not left out) but wait with further action until they fully understand the matter, and think Kenya will benefit from further action. *“They will sign where they need to sign, such that they operate within the parameters and are perceived by the OECD as participating”*. With regard to the specific 2015 DTT, the independent expert mentioned a few other reasons why the DTT was never ratified by the Kenyan parliament. First of all, the Kenyan tax treaty negotiators were commissioned to return to Kenya with a DTT. One can understand that this severely impedes the leverage and therefore negotiation power of these treaty negotiators. Second of all, Kenya has the tendency to *“sign before they check”*. Often, only after a DTT has been negotiated and signed, a thorough assessment takes place to check whether the DTT is actually beneficial to Kenya itself (e.g. NGOs and civil society are asked for their opinion on the signed DTT). Often a DTT turns out to not be beneficial after all, leaving the treaty signed but never ratified (this is the case for about half of Kenya’s DTTs). Due to international pressure, Kenya engages in treaty negotiations in order to “comply”, but further action (i.e. ratification of the agreement) is often not forthcoming.

According to a Kenyan expert on international taxation, the 2015 DTT was beneficial for the Netherlands but detrimental for Kenya. According to the expert, the main issue is the low withholding taxes. The publicly available 2015 DTT document (which was signed by both parties) included a 10 percent WHT on interests and royalties and a 10-15 percent WHT on dividends (with participation exemption concerning the companies which hold directly at least 10 percent of the capital of the company paying the dividends). However, the interviewee also mentioned that, at some point, the delegates from both countries discussed a WHT rate as low as 6 percent. Moreover, there were certain parties/companies within the Kenyan flower industry that would benefit from the DTT as it was signed. However, to Kenya as a whole, the expert labelled it as “detrimental”. The expert mentions this as a reason why the DTT was supposed to “get lost” in a bureaucratic process, such that Kenya was able to completely renegotiate the DTT with the Netherlands from the beginning. Moreover, the expert recommended to not even sign a DTT with the Netherlands in the first place. Often one of the reasons developing countries to sign DTTs is to spur investments. However, the most used incentive to date has been tax incentives, a means that can be used irrespective of the presence of a DTT.

4.3 Kenya's position regarding the MLI

RQ 7.3: To what extent is the multilateral instrument considered relevant by authorities in Kenya?

Kenya signed the MLI on 26 November 2019, but has not yet ratified it. Kenya has notified 14 DTTs to the MLI as covered tax agreements. Some of them were signed but not yet ratified and in force. One such covered tax agreement is the 2015 DTT with the Netherlands. This 2015 DTT would however only be modified only after the ratification of both MLI and the 2015 DTT.

According to the authorities, the main reason why Kenya preferred the MLI was efficiency. A KRA representative involved in international taxation noted that Kenya has less treaties than its treaty partners. For example, some of Kenya's treaty partners were noted to have as many as 80-120 DTTs, which implies it would have taken many years for these partners to start and complete their bilateral (re-)negotiations, including those with Kenya. For this reason, the KRA representative noted that "We felt that MLI would be a more effective route." The diversity of Kenya's bilateral DTTs described above, coupled with the lack of regulation of issues related to BEPS meant that Kenya acquired substantial efficiency gains by joining the MLI and regulating these issues with one piece of legislation. Also, signing the MLI was a political decision to convey Kenya as an important, active and reliable African partner with respect to international tax cooperation.

According to the template MLI, Kenya declared to adopt the following BEPS standards and solutions that would change covered tax agreements:

- Transparent entities provision – solving hybrid mismatches between contracting jurisdictions,
- Tie-breaking rule for non-individual double residency cases,
- Simplified Limitation of Benefits (SLOB) provision and preamble – but SLOB provision would only apply when all contracting jurisdictions would have chosen this provision or all contracting jurisdictions would have agreed to apply SLOB unilaterally; in other cases PPT would apply,
- A minimum holding period of 365 day – for withholding tax on dividends,
- Real estate clause (art. 13(4)) with a minimum holding period of 365 days,
- Wide acceptance of PE provisions,
- Mutual Agreement Procedure (MAP) provision with a reservation to apply the rule to submit MAP request only to competent authority of the country of residence, and
- Transfer pricing corresponding adjustment provisions.

With the above, Kenya's implementation of the MLI would go far beyond the BEPS minimum standard. Kenya has made only two reservations: it does not implement the arbitration procedure provided by the MLI and it made a reservation on the method to eliminate double taxation, as they claim "this is not relevant to us".

5 Case study 3: International Taxation IBFD

This case study examines the relevance and effectiveness of two capacity building events that the International Bureau of Fiscal Documentation (IBFD), a foundation, was commissioned to carry out in Kenya in 2015 and 2016 respectively. These events were part of the second “Capacity Building in Taxation” programme for the revenue authorities in selected partner countries, funded by the Dutch Government.

5.1 Relevance

Objective

RQ 5.1: What was the objective of this/these activity/activities?

The objectives of the activity can be summarised as follows: equip representatives of Kenyan authorities typically interested in tax treaty issues with relevant knowledge; raise awareness of cross-institutional viewpoints on tax treaty issues; foster cross-institutional collaboration. This definition derives from IBFD’s activity reports and our interviews. The activity’s objective has an explicit definition, which was planned to comprise only one iteration. The first part of the course was delivered in March 2015 and conceived to be an introductory course with the objective of: “...*providing a better understanding of the significance and impact of domestic law and tax treaties, and a better understanding of the viewpoint of each governmental institution involved ...*”.¹⁸ An explicit objective for the second part was not stated in the documentation. We therefore defined a *common objective* from the content descriptions of the two parts.

The course content complemented the aforementioned common objective. The course’s first part focused on international tax law, domestic and treaty double tax relief, transfer pricing as well as tax treaties, specifically the OECD and UN Models dealing with allocation of taxation rights. At the end of the first part, both organisers and participants concluded that a second part would benefit participants by allowing them to delve deeper into the subject. It is thus somewhat counterintuitive that different participants attended the course’s second part. Apart from the theoretical recap, the second part in June 2016, focused on strategic and operational issues of tax treaty negotiations. Representatives of the National Treasury, the Kenya Revenue Authority (KRA), the Ministry of Foreign Affairs and International Trade, the Kenya Investment Authority and the State Law Office participated in the course to ensure cross-institutional awareness.

Needs identification

RQ 5.2: How has the Netherlands identified the tax-related TA and training needs?

¹⁸ See IBFD June 2015 newsletter; see also IBFD training evaluation report “IBFD Report and Assessment concerning the Training for the Kenya National Treasury on International Taxation, held on 23 – 27 March 2015 in Nakuru, Kenya” (IBFD, 2015).

The activity resulted from a seminar provided in Amsterdam in September 2014 to officials from nine African countries. This seminar¹⁹ was mandated by the Dutch Ministry of Foreign Affairs and can be linked to an earlier IBFD report that found, *inter alia*, that African countries enter double taxation agreements but hardly maintain them.²⁰ The launch of the BEPS project and political debates and demands in the Netherlands to re-negotiating tax treaties that are not favourable for African countries were external factors that, according to our interviewees, were influential at the time. Against this background the seminar aimed to strengthen the capacity of tax administration officers in tax treaty management. The seminar “covered theories and practical application of the concepts and principles of international tax law, and on how these concepts are applied in business structures.”²¹ Some 30 officers from Ethiopia, Ghana, Kenya, Malawi, Rwanda, Tanzania, Uganda, Zambia, and Zimbabwe attended the seminar. At the fringes of the seminar and in bilateral meetings the country representatives expressed their general and perceived needs for supplementary capacity building support from IBFD. According to our interviews with IBFD, the bilateral meetings were specifically insightful since they revealed the concrete challenges and problems faced by the respective countries. The content of the second seminar was informed by the feedback of the first seminar’s participants; as mentioned above, hence retaining the same participant cohort for the second seminar might have been beneficial.

The course content was fine-tuned and operationalised in an iterative and consultative process to maximise the training’s relevance for the Kenyan representatives. In the preparatory phase IBFD’s Government Consultancy Department liaised with a contact person at the Kenyan National Treasury to determine the course’s objective, its content, structure and duration as well as organisational issues, including the venue and the coverage of participants’ expenses. The process was meant to ensure that the course addresses the needs of the participants (and the institutions they represent). A case in point that exemplifies the iteration was the composition of the participants: whereas IBFD *generally* suggested inviting representatives of several institutions, the contact person in Kenya determined who *specifically* to invite to the course. From this perspective it can be concluded that the course content was largely driven by the demands of the Kenyan authorities and that IBFD’s team used its expertise to help operationalise the demands in a useful programme. Our interviewees also confirmed that the process in Kenya reflects typical IBFD practice; it also mirrors the organisation’s ambition to be an impartial and neutral think tank on tax matters.²²

RQ 5.2: To what extent did it address the most urgent needs?

Around the time of the course there were intentions to develop a (new) tax treaty policy in Kenya, according to our interviewees. Little information could be collected about the activity’s pertinence at the time – other than the express requests of the Kenyan authorities for advisory support. Interviewees noted that there had been a general debate in Kenya about its tax treaties at the time. The debate might have been sparked by a high court ruling in March 2019, which

¹⁹ Training on Maintaining Tax Treaties, Amsterdam, 29 September-3 October 2014.

²⁰ <https://www.ibfd.org/IBFD-Tax-Portal/White-Papers>

²¹ IBFD Press Release, 23 September 2014; see also

<https://www.taxcompact.net/sites/default/files/resources/2014-12-ITC-Newsletter.pdf>

²² With a view to substantiate their view that IBFD operates on a “demand-driven” bases the interviewees stated that IBFD never depleted the funding that it had been granted by the Ministry of Foreign Affairs – which would not have been the case in a “supply-driven” approach.

invalidated a double taxation treaty between Kenya and Mauritius for statutory reasons.²³ Another significant development was the launch of the BEPS project, which was expected to have implications also for Kenya. These interviewees believed that the Dutch-financed assistance was thus timely, responding to developments that had been going on in Kenya at the time.

Information that we collected suggests that there have not been similar types of interventions by other development partners at the time. Whilst it cannot be confirmed, we conclude that the capacity building events addressed questions that were relevant for the Kenyan authorities at the time, and for which they had received little if any assistance before. Even if there had been similar types of interventions, they were likely not of the same scale in terms of duration and participation. IBFD explained they had undertaken efforts to avoid overlap and to ensure that their capacity building events are complementary to those of other bi- or multilateral organisations. These efforts included repeatedly asking the Kenyan counterparts about similar types of interventions; to reconfirm complementarity with the Kenyan authorities during the design process; to liaise with and enquire about the interventions of other organisations when opportunities arose (e.g. during meetings or conferences). However, interventions of other parties are not always known to all, but the IBFD argued it had made a reasonable effort to map the interventions of others. Also, the IBFD explained that, ultimately, the task of donor coordination should take place at the level of the recipient country. We conclude that these explanations were plausible and the efforts reasonable.

5.2 Effectiveness

Effect on the capacity of authorities

The vast majority of participants expressed high satisfaction with the course. The results of the participants' course evaluations was positive on all five evaluation dimensions. More than 80 percent of the participants were, for instance, fully satisfied with the course content and the majority also stated that the course helped them meet their learning objectives. The quality and performance of the experts who facilitated the course was consistently rated as very high. Still, participants also voiced critique and recommendations, including to better balance the quantity of the course content with the course duration; to increase the number of group breakouts for practice training; and to assure better participation of all participants. Generally, we learned that a "training of trainer" approach could be beneficial, not least in light of the considerable fluctuation of public sector staff.

The interviewees opine that the course was successful in strengthening their capacities and in creating awareness of different institutional interests related to tax treaties. All interviewees believe that the course was effective in raising knowledge about international tax issues; the interplay with domestic tax laws; and the UN and OECD Models. Since participants attending the both courses were not the same cohort, neither comparisons between the groups can be made nor can a learning effect between the first and second part be discerned (e.g. that the

²³ Tax Justice Network Africa v. Cabinet Secretary for National Treasury & 2 others (IJJN-A Case), Petition No. 494 of 2014. Judgment, March 15, 2019.

second part helped to “build upon” expertise resulting from the first one).²⁴ The extent to which the course had longer-term effects is also difficult to gauge. Some of the interviewees cautiously argued that Kenya signing the MLI constitutes a positive development, which must have been preceded by internal deliberations for which the course likely provided some basis. As one interviewee noted: *“I hope that the course influenced to some extent [...] internal discussions and deliberations”*. Other than that, there is little to substantiate the effectiveness of the training programme. However, we would not expect a two-week training programme to completely change the way treaty negotiators conduct negotiations, especially if the treaty partner continues to have greater capacity and knowledge of DTTs and other aspects of international taxation (which is generally the case when the treaty partner is a developed country). Similarly, a two-week training programme can definitely add to the understanding, willingness and ability to apply anti-abuse clauses, but it is unlikely to have major effects in this area. At the same time, when assessing the longer-term effects of the course, it needs to be taken into consideration that the OECD, the UN and the African Tax Administration Forum (ATAF) are the main capacity development partners of Kenyan tax authorities. As far as model tax treaties are concerned, the IMF plays an important role too, according to our interviews.

Subsequent to the course an “ad hoc committee” gathered informally on a few occasions to discuss tax treaty issues, suggesting that collaboration among course participants was fostered.²⁵ As mentioned above, the organisers tried to retain a large and heterogeneous group for both courses, with the intention to create a network of informed officials who would partake in tax treaty negotiations or otherwise directly or indirectly deal with tax treaties. Anchoring (some basic) knowledge in different organisations was thought to be a good strategy by the coordinators from the Kenyan side. The “informal” meetings were reportedly led by the participants of the National Treasury and the KRA, and served to develop a “tax treaty guidance” and a “tax treaty model”, both of which are said to be informally approved by the Kenyan authorities. However, the assumption that the course participants would in some form or another be (potentially) involved in the negotiations of tax treaties appears to not turn out in practice.

RQ 6.1: To what extent did TA and training activities contribute to implementation of BEPS-actions in Kenya?

The IBFD course helped to increase awareness about the BEPS programme and actions. In 2015/2016 BEPS issues were already covered in the course agenda. They were also part of 2016 offshore seminar.

It is not possible to draw a direct line between the training course and the Kenyan position on MLI. The evaluation of the course did not provide feedback on the impact of the course on the changes in Kenya's tax policy concerning the implementation of BEPS actions. Regardless of this, the increase in knowledge in this area probably had an impact on the decisions taken by the Kenyan tax authorities in the scope of BEPS implementation.

²⁴ For instance, the post-course evaluation results of the second part marginally more critical compared to those of the first one, but because the groups were different, no comparisons can be drawn.

²⁵ One of the course conclusions was to “further enhance intra-government cooperation: to establish a special unit for closer and institutionalised co-operation between the governmental departments and officials involved in tax treaty negotiations.” See IBFD (2015).

Effect on tax treaty negotiations

RQ 6.2: To what extent did TA and training activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between Kenya and the Netherlands?

Interviewees were not able to determine the impact of the course on Kenya's position in the negotiation of tax treaties. This was mainly due to the short lapse of time and the small number of agreements negotiated in recent years. Raising awareness and knowledge of international taxation issues, double tax treaties and the BEPS actions were set up as main objectives of the first part in 2015. The second part of the course provided in 2016 was mostly focused on analysis of the Kenyan DTTs and the BEPS issues. The course discussed the BEPS actions and specific issues of tax treaties relevant for developing countries based on the solutions provided by the UN Model.

6 Case study 4: Transfer Pricing ATAF²⁶

During 2016-2018, ATAF provided assistance in the area of transfer pricing to the Kenya Revenue Authority (KRA). ATAF's programme was part of a broader programme "on advanced transfer pricing issues and other international tax issues" that started in 2012. This broader programme was jointly offered by the OECD's Task Force on Tax and Development, ATAF and the World Bank in order to ensure "coherent and coordinated support" (TIWB 2019).

6.1 Relevance

Objective

ATAF's capacity building and advisory services ranged from the delivery of theory-oriented training events and workshops to policy and legislative advice, as well as discussions on actual cases that the KRA was in process of auditing. The participants in these capacity building activities often encompassed staff from different KRA departments. Overall, the assistance amounted to eight to ten weeks of on-site engagements during the three-year period.

Needs identification

Following a general request to ATAF, the KRA as well as ATAF and the OECD co-designed the content and approach of the capacity building and advisory services.

6.2 Effectiveness

Effectiveness on authorities' capacity

According to the members of KRA's transfer pricing operations unit that we interviewed, the workshops and case reviews were highly relevant and therefore very effective. This was specifically the case because they helped "unlock real cases" and therefore had an immediate effect on resolving practical challenges of the KRA. The combination of theory and practical advice facilitated the application to daily work and routines, according to the interviewees. They also stated that the process of obtaining and organising the assistance was efficient. They underlined that ATAF covering the cost of the consultant fee was of great value, since the respective unit only had a limited budget for capacity building.

The KRA team attested that ATAF's assistance was one of the factors contributing to its improved performance: Following an initial drop in tax adjustments related to transfer pricing in 2015, the past years saw steady growth. From July 2016 to July 2019 the transfer pricing unit completed sixty audit cases. The tax assessed from these audits (yield) increased from roughly

²⁶ This case study was done in the context of the 10-year impact evaluation of ATAF programmes that BSS and SEO jointly conducted. We are grateful to both ATAF and the KRA for their permission to use the case study for this evaluation.

KES 1.3 billion (2016/2017) to KES 36.2 billion in 2018/2019. Likewise, the collections increased from KES 2.2 billion to KES 6.1 billion in this three-year period. (Note: Collections are not necessarily from the same cases in a particular year; collections may be from cases assessed in previous periods. This is mainly a result of disputes that arise from assessments made on taxpayers that sometime take years to resolve.)

The KRA team also mentioned a number of positive indirect results that could be linked to the assistance it received. These included: (a) a steady growth in the Transfer Pricing Operations unit in KRA's International Tax Office (to some forty specialised staff handling complex multinational enterprises / cross-border cases); (b) Kenya's participation in the 2016-2018 TIWB South-South programme with Botswana; (c) KRA's deployment of experts to the TIWB and the Commonwealth Association of Tax Administrators; and (d) the KRA chairing the ATAF Cross Border Taxation Technical Committee.

Effect on the application of anti-abuse clauses

At the time of the interview, it was not yet clear whether ATAF's assistance had also indirectly contributed to urging tax policy authorities to proceed faster with needed legislative changes. However, a parliamentary process had started for the revision of the Kenyan Income Tax Act that contained legislative changes to transfer pricing related legislation.

Sources:

- KRA interview and follow-up written feedback;
- ATAF Annual Reports 2010-2019;
- ATAF Mission Report 2016;
- TIWB Annual Reports 2017/2018 and 2018/2019

7 Case study 5: IBFD Seminar on Offshore Entities

In 2016, the International Bureau for Fiscal Documentation (IBFD) conducted a one-week seminar in Amsterdam on offshore entities. The seminar, sponsored by the Ministry of Foreign Affairs of the Netherlands, was attended by 23 tax administrations officers from six SADC and EAC Member States, namely Kenya, Malawi, Rwanda, Tanzania, Uganda, and Zambia. The seminar programme consisted of a theoretical part (“morning sessions”) and a case study (“afternoon sessions”), including a field visit to a trust company in Amsterdam.

7.1 Relevance

Objective

RQ 5.1: What was the objective of this/these activity/activities?

The objective of the seminar was “to share ... insights on the current discussions around the use of offshore companies and other entities in light of global developments on exchange of information (on demand and automatic) and other strategies that administrations may adopt”.²⁷ The content of the seminar was intended for officials who routinely deal with offshore entities (e.g. auditors), as well as policy makers and treaty negotiators. According to interviewees, the seminar specifically aimed to encourage participating tax officers to gain confidence (“to be less shy”), to not take for granted information received from taxpayers, but to ask critical questions and to make use of all available tools and instruments, including mutual assistance agreements.

Needs identification

RQ 5.2: How has the Netherlands identified the tax-related TA and training needs?

The seminar resulted from feedback and experience that IBFD gained from different capacity building events in 2015-2016 that suggested “tax planning schemes pose serious detection and taxation problems” for tax authorities.²⁸ The interviewees also mentioned other issues that informed the seminar, namely (i) a 2013 research paper by Action Aid that concluded that due to capacity constraints, many tax authorities in African countries often neither applied their tax avoidance rules at the domestic level nor respective treaty provisions;²⁹ (ii) political developments in the Netherlands against abusive conduct by offshore entities; and (iii) an earlier IBFD event on tax planning issues.

RQ 5.2: To what extent did it address the most urgent needs?

²⁷ Evaluation report «Offshore Entities – Past, Present and Future», 17-21 October 2016, Amsterdam, IBFD. Note: The evaluation reports that we were able to consult from courses that IBFD conducted in 2015 and 2016 in Kenya and Uganda respectively do not mention offshore entities explicitly in the recommendations’.

²⁸ Ibid.

²⁹ https://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf

The seminar was relevant based on the aforementioned considerations, which includes the apparent capacity constraints of the tax authorities. The seminar was designed to render the content relevant for each of the “country teams” (group of participants from a given country) by facilitating discussions on why and to what extent offshore tax avoidance and evasion take place and the potential response measures one can implement. In addition, it appears that there has only been very little if any capacity building (at least for the participants who attended the seminar) in these areas. Nonetheless, whether it addressed “most urgent needs” cannot be established.

7.2 Effectiveness³⁰

Effect on the capacity of authorities

IBFD facilitators were of the opinion that the seminar reached its objective of “sharing insights”. They also stated that the course set-up was very effective to make the transfer from theory to practice.³¹

Participants rated the seminar very positively on all four evaluation dimensions that were asked in the post-seminar evaluation form. A representative of the Kenyan National Treasury called the training “eye opening” and “very beneficial” at having improved his understanding.

While difficult to assess, the likely impact on improving participant’s capacity was good. Based on interviews, it appears that most seminar participants had little or no knowledge of aggressive international tax planning prior to the seminar. Improved awareness and knowledge of these issues (in particular, using offshore entities for tax evasion and avoidance, hybrid entities, exchange of tax information) can in turn be expected to inform and influence Kenya’s tax policy, and could potentially help the authorities to start taxing transactions that they currently cannot tax.

Multiple participants expressed the wish for more training. Some asked for a longer seminar to cover the entire curriculum, as well as additional topics such as transfer pricing. Others noted the need for “continuous” training and for the course to be repeated, also because of the high turnover within the Treasury and KRA: “By the time you come back, nobody may be in that section, they all have moved. Now you are in international taxation, the next time you are in a different area.” Another suggestion made in this regard was to work on “training of trainers” to ensure the sustainability of the training.

Effect on tax treaty negotiations

RQ 6.2: To what extent did TA and training activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between Kenya and the Netherlands?

³⁰ A one-week seminar can be effective in increasing the capacity of the participants. However, one should not expect that such a seminar can entirely shift the manner in which treaty negotiators conduct negotiations, especially if the treaty partner remains superior in terms of capacity and knowledge of DTTs and other aspects of international taxation (which is generally speaking the case when the treaty partner concerns a developed country). Similarly, the seminar can definitely add to the understanding, willingness and ability to apply anti-abuse clauses, but it is in isolation too small to shift the paradigm.

³¹ The seminar programme consisted of a theoretical part (“morning sessions”) and a case study (“afternoon sessions”), including a field visit to a trust company in Amsterdam.

Interviewees were not able to address the question of the seminar’s impact on Kenya’s position in the negotiation of tax treaties. This was mainly due to the short lapse of time and the small number of agreements negotiated in recent years. However, the seminar helped authorities to respond to questions like: Do we need a tax treaty policy? What shall the policy look like? What do we need to effectively implement the policy? Such long-term developments were beyond the scope of the seminar, and beyond the control of IBFD. Interviewees concluded that they could observe some progress, but they did not know whether the results were caused by the seminar.

With regard to DTTs, participants are likely to have drawn useful lessons from two cases. The first was the example of a High Court decision in Kenya, which decided that Kenya is not allowed to ratify its DTT with Mauritius signed in 2012 because of the threat of tax avoidance created by the provisions of this treaty. The second example was the case of the Malawi–Netherlands tax treaty. Around 2014, Malawi terminated the old tax agreement with the Netherlands (dating back to the late 1940s) because it was considered highly unfavorable. A new treaty was negotiated and signed in 2015 but Malawi has not yet ratified it (Dutch Ministry of Finance, 2020). In the opinion of interviewees, the current guidelines on the Dutch treaty policy towards developing countries should meet the concerns raised by Malawi, in particular with respect to the level of withholding taxes. The Malawian DTT provides for WHT on dividends which are subject to a 5 percent withholding tax in the case of shareholdings of at least 10 percent, and 0 percent for pension funds. The standard rates (10/15 percent) in both countries apply to other dividends. Interests are taxed at 10 percent and royalties at 5 percent. It is possible that this will influence the position of Kenya in further negotiations with the Netherlands.

The seminar may also have had an impact on the extent to which participants have an informed position on exchange of information. The main focus of the seminar was to explain the role of exchange of information for tax purposes (including via tax information exchange agreements, TIEAs) and other forms of administrative assistance in combating tax evasion. Kenya had already signed the Convention on mutual administrative assistance in tax matters (CMAAT), hence its legal framework for EOI was already fully consistent with international standards. Moreover, Kenya is also a member of the Global Forum on transparency and exchange of tax information, where it has been reviewed by peers on implementation of EOIR standards, based on which it received a general rating “largely compliant”.

Effects on the application of anti-abuse clauses

RQ 7.2: Are authorities able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?

The seminar addressed capacity gaps in implementation and application of exchange of tax information provisions and anti-abuse clauses. Application of these provisions is dependent on the activation of domestic resources in order to collect information from taxpayers, to actively use the option to request tax information from competent authorities of treaty partners, and to properly use received information, e.g. for tax audit risk analysis. The benefits of building the capacity in this area was also presented.

From the six countries taking part in the seminar, Kenya was one of the two countries that had already joined the Inclusive Framework (the other one being Zambia).

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Appendix A List of interviewees

Table A.1 Interviewees for the purpose of the Kenyan case study report

Name	Role and organisation
Bernard Apind	Tax Policy Officer on Cross Border Taxation and Treaty Negotiations at The Kenyan National Treasury
Jan de Goede	Senior Principal, Tax Knowledge Management at the International Bureau of Fiscal Documentation (IBFD)
Isaac Gitone	Senior Policy Analyst at the Sectoral and Financial Affairs Department of Kenya's National treasury
Carlos Gutierrez	Principal Research Associate at IBFD Tax Services
Geert Holterman	Policy Advisor at the Sustainable Economic Development Department of the Ministry of Foreign Affairs
Bart Kusters	Senior Principal Research Associate in International Bureau of Fiscal Documentation's (IBFD) Tax Services Department
Geerten Michielse	Senior Economist (Tax Policy) at the Fiscal Affairs department of the IMF
Josephine Muchiri	Manager International Tax Office at the KRA
Grace Namugambe	Programme Officer- Financing for Development/ Tax Justice - SEATINI-U
Regina Navuga	Programme Officer SEATINI-U
Joseph Ngugi	Deputy Director, Macro and fiscal affairs at the Kenyan National Treasury
Cromwel Pkomu	Policy Advisor at The Kenyan National Treasury
Tobias Rasmussen	IMF Resident Representative in Kenya
Robert Suuna	Head of Tax Analysis at Tax Justice Network (TJN) Africa
Gijs Verbraak	Senior Policy Advisor at ActionAid
-	<i>Academic and tax expert</i>
-	<i>Representative of a Big-4 firm in Kenya</i>
-	<i>Representative of a Big-4 firm in Kenya</i>

Source: SEO Amsterdam Economics

Appendix B BEPS actions³²

- **Action 1 Tax Challenges Arising from Digitalisation**

Addressing the tax challenges raised by digitalisation is currently the top priority for the OECD/G20 Inclusive Framework, and has been a key area of focus of the BEPS Project since its inception. This work has delivered several important outputs covering both direct and indirect tax issues.

- **Action 2 Neutralising the effects of hybrid mismatch arrangements**

BEPS Action 2 called for the development of model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effects of hybrid instruments and entities. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 2 culminated in the 2015 OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements.

- **Action 3 Controlled Foreign Company**

The Action 3 recommendations outline approaches to attribute certain categories of income of foreign companies to the shareholder(s) in order to counter offshore structures that shift income from the shareholder jurisdiction. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 3 culminated in the 2015 OECD report Designing Effective Controlled Foreign Company Rules

- **Action 4 Limitation on Interest Deductions**

The Action 4 recommendations aim to limit base erosion through the use of interest expense to achieve excessive interest deductions or to finance the production of exempt or deferred income. The work by the Inclusive Framework member jurisdictions on Action 4 resulted in the 2015 OECD report Limiting Base Erosion Involving Interest Deductions and Other Financial Payments.

- **Action 5 Harmful tax practices (Minimum Standard)**

The Action 5 Report is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review.

- **Action 6 Prevention of tax treaty abuse (Minimum Standard)**

BEPS Action 6 addresses treaty shopping through new treaty provisions whose adoption forms part of a minimum standard that members of the BEPS Inclusive Framework have agreed to implement. It also includes specific rules and recommendations to address other forms of treaty abuse. Action 6 identifies tax policy considerations jurisdictions should address before deciding to enter into a tax agreement.

- **Action 7 Permanent establishment status**

The work carried under BEPS Action 7 provides changes to the definition of permanent establishment in the OECD Model Tax Convention to address strategies used to avoid having a taxable presence in a jurisdiction under tax treaties.

- **Action 8-10 Transfer Pricing**

³² <http://www.oecd.org/tax/beps/beps-actions/>

BEPS Actions 8-10 address transfer pricing guidance to ensure that transfer pricing outcomes are better aligned with value creation of the MNE group. In this regard, Actions 8-10 clarify and strengthen the existing standards, including the guidance on the application of the arm's length principle and an approach for appropriate pricing of hard-to-value-intangibles within the arm's length principle.

- **Action 8 – Intangibles**

Action 8 addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting.

- **Action 9 - Risks & Capital**

Work under Action 9 considers the contractual allocation of risks, and the resulting allocation of profits to these risks, which may not correspond with the activities actually carried out. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.

- **Action 10 - High-Risk Transactions**

Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

- **Action 11 BEPS data analysis**

The BEPS Action 11 report Measuring and Monitoring BEPS established methodologies to collect and analyse data on the economic and fiscal effects of tax avoidance behaviours and on the impact of measures proposed under the BEPS Project.

- **Action 12 Mandatory Disclosure Rules**

BEPS Action 12 provides recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers.

- **Action 13 Country-by-Country Reporting (Minimum Standard)**

Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.

- **Action 14 Mutual Agreement Procedure (Minimum Standard)**

The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Inclusive Framework jurisdictions have committed to have their compliance with the minimum standard reviewed and monitored by its peers through a robust peer review process that seeks to increase efficiencies and improve the timeliness of the resolution of double taxation disputes.

- **Action 15 Multilateral Instrument**

The Multilateral Instrument offers concrete solutions for governments to close loopholes in international tax treaties by transposing results from the BEPS Project into bilateral tax treaties worldwide. The MLI allows governments to implement agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies