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**THE EXTRAORDINARY SPECIALISED TECHNICAL COMMITTEE ON FINANCE, MONETARY AFFAIRS, ECONOMIC PLANNING AND INTEGRATION**

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# BRIEFING FOR THE MINISTERS ON TAXING THE DIGITAL ECONOMY AND THE GLOBAL TAX DEBATE

This Briefing Paper was produced in collaboration with the African Tax Administration Forum (ATAF)

# Contents



## Acronyms

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| ADS | Automated Digital Service |
| ATAF | African Tax Administration Forum |
| AUC | African Union Commission |
| BEPS | Base Erosion and Profit Shifting |
| CFB | Consumer-Facing Business |
| CIT | Corporate Income Tax |
| DST | Digital Services Tax |
| IF | Inclusive Framework |
| IFFs | Illicit Financial Flows |
| OECD | Organisation of Economic Cooperation and Development |

## EXECUTIVE SUMMARY

A key challenge facing African countries is the limited ability to tax multinationals due to complicated tax planning techniques deployed by these multinationals. Over the past two decades, we have seen an increased awareness and drive by African countries to improve Domestic Revenue Mobilisation (DRM) to meet expenditure needs that enhance the lives of their citizens. Although there is progress, tax collections are still at low levels as the average tax-to-GDP ratio for 34 African countries in 2017 was 15.2%[1] compared to the Organisation of Economic Co-operation and Development (OECD) average of 34.2%[2]. Furthermore, as the 4th Industrial Revolution has increased digitisation, African countries have seen a drop in traditional tax revenues, as digital multinationals (MNEs) trade remotely in these jurisdictions with no physical presence but create value and make significant profits through their interactions with citizens. The African countries have therefore over the last couple of years, struggled to keep pace with the international tax system in a bid to obtain more equitable taxing rights, and to ensure capacity is realised to tax digital services through the ongoing global debate on taxing the digital economy.

Since 2015, there has been increased international cooperation through the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS), where one hundred and thirty-seven (137) countries, of which twenty-five (25) are African countries, are working towards a consensus-based solution articulated through two Pillars that have been developed in this regard. It is envisioned that this would change the international taxation rules for the first time in over 100 years. Under Pillar 1, a consensus-based solution is being explored for the allocation of taxing rights occasioned by the discussion on the digital economy. Under Pillar 2, policymakers are discussing the possibility of having a global minimum Corporate Income Tax rate.

That said, although African countries have participated mainly in the process, to date the current proposals though not yet decided upon, do not address the current imbalance in taxing rights. The most recent G20 meeting held in October 2020 decided to extend the decision on the global debate on taxing rights to mid-2021 in the hope that a consensus will have been reached by then. This provides a window of opportunity for Africa to meet and agree on how best its voice can be heard regarding the critical pain points, and to push for an outcome that would be beneficial to its context.

Currently, the critical concerns for African countries as their economies become increasingly digitalised are:

[1] African Tax Administration Forum's African Tax Outlook 2019
[2] OECD's Revenue Statistics 2019

1. The allocation of taxing rights between residence and source jurisdictions has been an issue of considerable concern for African countries for many years. This is because the current nexus and profit allocation rules are skewed too heavily in favour of the residence jurisdictions, while African countries are generally source countries and tax on a source basis.

2. African countries are further concerned that their tax bases are being eroded by Illicit Financial Flows (IFFs) due to MNEs artificially shifting profits to jurisdictions where the profits are subject to little or no tax. UNCTAD's Economic Development in Africa Report 2020 estimated that yearly African countries lose USD89 Billion to IFFs. The OECD/G20 BEPS project does not adequately stem these IFFs as they are too complex to administer and are not comprehensive enough effectively.

In this light, this policy paper highlights the vital issues regarding the global tax debate that is crucial for African countries. The paper aims to appraise African Finance Ministers on the status of the negotiations and what is at stake for the continent. The desired outcome based on this will be the provision of policy direction by the Finance Ministers on how best to articulate Africa's Position on the critical issues in the debate, that will secure Africa's taxing rights for decades to come. This policy direction is crucial at this stage, given that the technical elements have been consistently addressed by both the African members of the IF, assisted by ATAF.

## 1. BACKGROUND

In 2013, the G20 mandated the Organisation for Economic Development and Cooperation (OECD), to commence working on revising the international tax rules that have remained unchanged for almost 100 years. The objective was to address revenue loss through aggressive tax avoidance and tax evasion. The project was titled Base Erosion and Profit Shifting (BEPS) and highlighted 15 action points focused on international tax issues and aiming to align taxation to the realities of modern globalisation.

The process commenced with OECD countries and G20 countries reviewing the international tax standards and working on developing and setting a new standard. Immediately, it became evident that much of the taxation issues caused by multinational enterprises stripping profits out of developing countries wee not been addressed by developing countries. The process initially had only involved developed countries, but developing countries were incorporated to make it more inclusive. A year into the project, the OECD extended observer status to regional tax organisations such as the African Tax Administration Forum (ATAF), Inter-American Centre for Tax Administrators (CIAT), and Exchange and Research Centre for Leaders of Tax Administrations (CREDAF).

The BEPS Project also aimed to address the rising issues noted due to the digitalisation of the global economy. These elements were not completed during the BEPS Project, and Action 1 of the project was tackled by the establishment of the Inclusive Framework on BEPS which also aimed at implementing the four minimum standards highlighted in the BEPS Project. These minimum standards are: countering harmful tax practices (Action 5), countering tax treaty abuse (Action 6), transfer pricing documentation and country-by-country (CbC) reporting (Action 13); and improving dispute resolution mechanisms (Action 14).

Twenty-five (25) African countries are members of the Inclusive Framework, meaning over half of the continent is not participating in the standard-setting process. Additionally, several countries have joined the Inclusive Framework as a means of avoiding blacklisting from the European Union Council; but don't necessarily actively participate.

To date, the discussions in the Inclusive Framework are focused on developing new rules for the taxation of digitalised business. Not only will this cover highly digitalised business or automated digital services (ADS) such as Facebook, Google, Airbnb, but it will also cover consumer-facing businesses (CFB) such as manufacturing, and service business by attempting to adjust the rules around the allocation of taxing rights.

The tax challenges arising from digitalisation have led the OECD to move at a rapid pace in formulating new rules to address these issues. In doing so, OECD-countries have been ready and well prepared to isolate the issues essential to their economies. In contrast, African countries have primarily held individual positions that are, therefore, weak and uncoordinated. Moreover, African countries have not made substantive inputs into the Inclusive Framework. Though ATAF has been working with countries to urge them to attend to the technical issues while providing countries with briefing notes for meetings, this too has had its limitations in the absence of clear continental policy direction.

Changes in the economy raise fundamental questions regarding the allocation of taxing rights, the concepts of source and residence taxation and the opportunities it may create for international tax avoidance and Illicit Financial Flows. Historically taxing rights have been allocated between tax jurisdictions on a source and residence basis. That is, the current arrangement considers whether the country that is the source of the income has the right to tax; or if the country of the recipient of the income has the right to tax it; or whether they share taxing rights. This system is premised on there being two countries in the value creation.

Largely, African countries, except for South Africa and a few others, are typically source countries. The ongoing debate raises fundamental questions about the source countries taxing rights and what exactly is meant by a source country. For example, is State A above where the user participants have located a type of source country? African countries must be proactively involved in considering the consequences of these issues in the context of both the global tax debate and the continental tax debate and in terms of whether in the absence of a global consensus, they should take any unilateral measures which some countries such as France and the United Kingdom have taken to stem revenue loss.

There is currently no consensus in the global tax debate on these issues in the context of Corporate Income Tax. However, the debate is moving at a quick pace. The OECD announced in October 2020, after the latest round of Inclusive Framework meetings that the aim is to have a consensus-based global solution by mid-2021. The Inclusive Framework consists of 137 jurisdictions, including 25 African countries, and it is, therefore, crucial that Africa proactively influences the 2021 global solution to ensure it is fit for purpose in Africa.

Countries also need to consider whether they should take any interim unilateral measures such as the introduction of a Digital Services Tax (DST) to stem the loss of tax even as they await a global solution which may or not be found in 2021. In September 2020, as part of its support to African countries and on its members' behest, ATAF published a "Suggested Approach to Drafting Digital Services Tax Legislation".

## 2. INTRODUCTION

2.1 Many African countries have reported concerns about the tax challenges they face as their economies become increasingly digitalised. Digitalisation enables multinational enterprises (MNEs) to carry out business in African countries with no or very limited physical presence in those countries. This makes it difficult for African countries to establish taxing rights over the profits the MNE is making from the business activities it carried out in the specific African country.

2.2 The above is due to the current international tax rules only allocating taxing rights to a country where a non-resident enterprise creates sufficient physical presence in that country, i.e. creating a "nexus" in that country. Business models that enable an MNE to carry out business in an African country with no or very limited physical presence in that country, therefore, represent a significant tax risk.

2.3 The examples cited by commentators of such business models are usually those such as social media platforms, search engines and online marketplaces. However, digitalisation of the economy raises a number of tax challenges relating to the broader economy as digitalisation is increasingly impacting the value chains of a wide range of businesses. These changes to value chains have raised questions as to whether fundamental changes are needed to the two key underlying principles of the international tax rules. These are the above-mentioned nexus rules and the profit allocation rules (which determine how the MNE's global profits are allocated between jurisdictions, primarily using transfer pricing rules).

2.4 In particular, digitalisation raises the question of how taxing rights on income generated from cross border transactions should be allocated between jurisdictions. The allocation of taxing rights between residence and source jurisdictions has been an issue of considerable concern for African countries for many years. African countries are generally source countries and tax on a source basis. ATAF members often report that they consider the current nexus and profits allocation rules are weighted too heavily in favour of the residence jurisdiction to the detriment of the source (African) jurisdiction. Hence the need for a solution on taxing digital sales/services due to their virtual nature that negates this physical presence.

2.5 African countries are also concerned that their tax bases are being eroded by Illicit Financial Flows due to MNEs artificially shifting profits to jurisdictions where the profit are subject to little or no tax. They consider that the outcomes of the OECD/G20 BEPS project do not adequately stem these IFFs as they are too complex to effectively administer and are not comprehensive enough to address the artificial profit shifting seen in Africa.

## 3. INCLUSIVE FRAMEWORK DIGITALISATION PROJECT

3.1 The Inclusive Framework is proposing changes to the global tax rules, which involves a consensus-based solution to the above challenges building on two pillars. One pillar focuses on the allocation of taxing rights while the second aims to counter artificial profit shifting strategies used by MNEs in so far as these have not been addressed by BEPS outcomes.

3.2 Pillar 1 will revise the current profit allocation (transfer pricing) rules which in almost all countries, including African countries, are based on the arm's length principle. The pillar proposes revisions that will result in more profits allocated to market jurisdictions.

3.3 To achieve this outcome, Pillar 1 encompasses three types of taxable profits that may be allocated to a market jurisdiction: these are described as Amount A, Amount B and Amount C. Technically, Amount C relates to the proposed enhanced dispute prevention and resolution mechanism.

3.4 Pillar 2 aims to address remaining BEPS issues by ensuring that all the global profits of an MNE are taxed at least at a minimum effective tax rate. This would directly address the ever present concern on wasteful tax incentives if equitably agreed.

3.5 The main elements of the second pillar are four interacting rules designed to ensure all global profits of large MNEs are taxed at least at the minimum effective tax rate. These rules are in the form of (a) an Income Inclusion Rule (b) a Switch Over Rule (c) Undertaxed Payment Rule and a (d) Subject to Tax Rule.

## 4. CURRENT STATUS OF THE INCLUSIVE FRAMEWORK PROPOSALS

***Pillar One***

4.1 There are three main elements to this pillar. The first consists of a new rule which allocates part of the global residual profit of large MNEs to market jurisdictions for tax purposes, i.e. the jurisdictions where the goods or services, including digital services, are consumed. This is called the Amount A rule. The rule will only apply to large MNEs that conduct a business that provides automated digital services (e.g. social media platforms) or is a consumer-facing business (e.g. selling food and beverages). Amount A is a new taxing right that allocates additional taxing rights to market jurisdiction which operates in addition to the tax due to that jurisdiction under the current profit allocation rules of the arm's length principle.

4.2 In December 2019, the US Secretary to the Treasury wrote to the OECD stating that the USA considers the Amount A rule should be implemented on a safe harbour basis whereby MNEs may opt-in or out of the application of the Amount A rule. Almost all other Inclusive Framework members oppose this proposal which they consider would make the Amount A rules unworkable. This issue remains unresolved, and the Inclusive Framework has agreed to revisit the proposal if and when there is agreement on the other aspects of the Amount A rules.

4.3 The second element consists of a simplification of the current transfer pricing rules in that this rule allocates a fixed return for tax purposes to routine distribution and marketing activities taking place in the market jurisdiction. This is referred to as Amount B.

4.4 The third element consists of new and more effective dispute prevention and resolution mechanisms. For the new Amount A rule, the current proposal is that this would be a mandatory binding mechanism. For tax treaty-related disputes beyond the Amount A rule, there is no agreement on the type of dispute resolution mechanism that would be used, but there is a proposal that for smaller countries where there are limited treaty disputes, i.e. a low number of Mutual Agreement Procedure (MAP) cases the country will be able to elect whether to enter into a binding mechanism.

***Pillar Two***

4.5 The main elements of this pillar are four interfacing rules designed to ensure all the global profits of large MNEs are taxed at least at the minimum effective tax rate. These are:

4.6 **An Income Inclusion Rule (IIR)** that operates as a minimum tax by requiring a shareholder(s) in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to an effective tax rate above a minimum rate. Such a rule favours residence-based jurisdictions.

4.7 **A Switch Over Rule (SOR).** This simply ensures that the income inclusion rule applies to foreign branches exempt under double tax treaties. It would only apply where countries have an exemption method in their tax treaties.

4.8 **An Undertaxed Payment Rule (UPR).** While the income inclusion rule taxes the shareholder(s) on the low-taxed income of a corporation, the undertaxed payments rule operates by denying a deduction or making an equivalent adjustment in respect of intra-group payments that are taxed in the recipient jurisdiction at below the minimum effective tax rate. This rule is favourable to source-based jurisdictions.

4.9 **A Subject To Tax Rule (STTR)** which would subject a payment to withholding tax or other taxes at source by denying treaty benefits on certain types of payments that are not subject to tax at a minimum effective rate. This rule is also favourable to source-based jurisdictions.

4.10 Most African countries are source-based jurisdictions, and therefore, the undertaxed payments rule, or subject to tax rule having priority over the income inclusion rule would assist in redressing the current imbalance in the allocation of taxing rights between residence and source jurisdictions, which unfairly favours residence jurisdictions.

4.11 The current Inclusive Framework proposal on the order of application of the rules is for the subject to tax rule to be applied first, then the Income inclusion rule in combination with the switch over rule and lastly the undertaxed payments rule. Such a rule order will only assist source jurisdictions if Inclusive Framework members commit to including the subject to tax rule in all of their tax treaties where it is requested by the treaty partner and the rule is broad in the scope covering all payments already covered in the treaty.

## 5. OUTCOMES OF THE 10TH MEETING OF THE INCLUSIVE FRAMEWORK

5.1 The 10th meeting of the Inclusive Framework took place on 8th and 9th October. At that meeting, the Inclusive Framework agreed to the Pillar One blueprint report, the Pillar Two blueprint report and a cover statement on the two reports. Those reports were released for public comment on 12th October and sent to the G20

Finance Ministers for discussion at their meeting of 14th October 2020, where the G20 Finance Ministers endorsed the revised timeline for an agreement to mid-2021.

5.2 These documents reflect where there are convergent views on several key policy features and principles of each pillar. They also identify that there are still many political and technical issues where there are different views among Inclusive Framework members.

5.3 The Inclusive Framework meeting also discussed the OECD's report on the economic impact assessment of the tax challenges arising from digitalisation. The report analyses the economic and tax revenue implications of both Pillars as set out in the blueprints. It estimates that the Pillar One and Pillar Two rules could increase global Corporate Income Tax revenues by about USD 60 -100 billion per year or up to around 4% of global CIT revenues taking into account the combined effect of these reforms and the US GILTI regime.

5.4 At the meeting, ATAF and many African delegates noted that the cover statement makes it clear that at this stage nothing is agreed and expressed their doubts that the Inclusive Framework will reach a global consensus-based solution in 2021. During Africa's participation in Inclusive Framework meetings over the past two years, it has become clear that as the key issues crystallise, the views of countries are becoming more and more divergent and the gaps to be bridged are increasing. This is typified by the proposal made by the USA in December 2019 that the rules for taxing digital companies (the so-called Pillar One rules) should be on a so-called safe harbour basis. A proposal that is strongly opposed by many other countries who consider this is tantamount to a voluntary tax and would make the rule ineffective.

5.5 Even if a consensus can be reached, ATAF and many African countries consider the current proposals fall far short of a solution that addresses the key tax issues facing Africa. In particular, the current imbalance in the allocation of taxing rights which unfairly allocates those rights in favour of residence jurisdictions to the significant detriment of source jurisdictions is not addressed in the proposal despite promises by some larger developed countries at the beginning of the work that it would do so.

5.6 In addition, ATAF and many African countries do not consider the proposed Pillar Two rules will stem Illicit Financial Flows out of Africa through corporate tax avoidance. In particular, the minimum effective tax rate in the rule is likely to be much lower than the statutory Corporate Income Tax rate in most African countries so it will not remove the incentive for profit shifting out of Africa. Also, unless the

Subject to Tax Rule is broad in scope covering all payments that are within treaties and all Inclusive Framework members commit to including the rule in all treaties where the treaty partner requests, the rule will not address base eroding payments out of African countries.

5.7 **The Inclusive Framework negotiations have made it clear that developed countries are not listening to the concerns of developing countries and have no intention of redressing the balance of taxing rights in any significant way. Africa must mobilise itself at a political level if it is to change the stance of developed countries and address these key tax issues**.

## 6. RISKS TO AFRICAN TAX BASES

***Pillar One***

6.1 Based on the numbers provided by the OECD the amount of tax that will be reallocated to market jurisdictions under Amount A will be relatively small and the smaller the market, the smaller the amount of tax.

6.2 The fixed returns set under amount B may yield little additional tax if, as appears likely, the scope of the new rule is narrow.

6.3 Based on ATAF members experience of mandatory binding arbitration in other tax and non-tax issues; if African countries commit to a mandatory binding mechanism the loss of tax from such a mechanism is likely to be significantly greater than the additional tax received under the above two rules.

***Pillar 2***

6.4 The OECD forecasts that the amount of tax reallocated under Pillar Two will be far greater than under Pillar One, and the issue here is how this additional tax will be reallocated between residence and source jurisdictions.

6.5 Prima facie if the subject to tax rule is applied first, source jurisdictions should be the main beneficiaries. However, unless it is mandatory for all IF members to (a) include in any treaty where the treaty partner requests it and (b) the rule is broad in scope to include all types of base eroding payments such as dividends, interest, royalties and service fee and also capital gains - the rule will in practice be largely ineffective.

6.6 This means that the tax will be allocated to residence-based countries under the income inclusion rule, and source jurisdictions will receive very little of the tax.

**Issues being faced by African delegates to the OECD IF Steering Group**

- Africa is in danger of being collateral damage in the process. The USA, the EU and other large countries have their own priorities such as the issue of mandatory binding arbitration (MBA) for all transfer pricing disputes which the USA and EU want but China, India and African countries do not. Since the Inclusive Framework should be a global consensus-based solution, African countries are caught up in the middle of these disputes between other countries.

- The IF Steering Group, which is playing a key role in the work, has four African countries on it being South Africa, Nigeria, Cote D'Ivoire and Senegal. They are actively participating, but they consider that their views, whilst being listened to by the OECD Secretariat, are being ignored by larger countries.

- Some Decisions were said to have been agreed upon when in essence they they have not been agreed, and larger countries must be continually reminded that the process is on a without prejudice basis.

- Many larger countries are not showing any attempt to compromise and are simply reiterating their positions and pushing forward with those positions. So there is a need for a continental stance to be taken, for effect.

## 7. POSITIONS AFRICAN COUNTRIES SHOULD CONSIDER

**Deal breakers for Africa**

***Pillar One***

- Amount A thresholds must ensure that small economies are not excluded from receiving Amount A tax

- Amount B must be broad enough in scope to provide meaningful tax in Africa

- No mandatory binding dispute resolution mechanism for any disputes other than those relating to Amount A

***Pillar Two***

- A sourced based rule must be the primary rule for Pillar Two, whether it's a mandatory Subject to Tax Rule or the Undertaxed Payments Rule.

## *7.1 Amount A*

7.1.1 The initial discussion drafts on Pillar one proposed a group global revenue threshold of €750m for determining the multinational enterprises (MNEs) that are in the scope of Amount A. ATAF and its members note that this threshold should ideally be reduced to maximise the benefit of Amount A to African countries.

7.1.2 The recently released Blueprint Report on Pillar One indicates that there is a proposal of having a phased approach on setting the global revenue threshold which could start with an even higher threshold that might be in place for several years. Adoption of this approach would significantly reduce the quantum of Amount A available for allocation to eligible jurisdictions, making this a key issue for African countries to oppose.

7.1.3 The nexus country threshold is even more important for African countries than the group global revenue threshold since if it is set as a fixed amount, many smaller African and developing economies will receive nothing from Amount A. ATAF is of the view that the design of this threshold should consider the relative sizes of economies to ensure fairness in the allocation of the new taxing rights.

7.1.4 The proposal for plus factors such as the physical presence or sustained target advertising expenditure in the market jurisdiction is not appropriate as it will complicate the implementation of the rules. Additionally, the plus factors under discussion might be impacted by the digitalisation of business models leading to lack of physical presence in a market jurisdiction ultimately causing exclusion of many Africa countries from an allocation of Amount A.

7.1.5 A carve-out of the financial sector from Amount A may not be appropriate as this is an important sector in Africa, and the fact that it is regulated is not a reason to exclude it as regulators do not regulate on tax issues. It was noted that these regulations require the sector to be physically present in the country, but there is concern that increasingly services are being offered remotely.

## *7.2 Amount B*

7.2.1 Amount B is intended to simplify the administration of transfer pricing in respect of distributors that perform the so-called baseline marketing and distribution activities. It achieves that simplification by proposing a fixed remuneration for the activities in scope.

7.2.2 The definition of baseline marketing and distribution activities covers distributors that (i) buy from related parties and resell to unrelated parties; and (ii) have a routine distributor functionality profile.

7.2.3 ATAF is of the view that whilst the policy objective of Amount B may be beneficial to African countries, the proposed scope is too narrow as it will only capture limited risk distributors that buy goods from related parties for onwards distribution in a country.

7.2.4 Sales agents should be within the scope of Amount B as, if excluded, the difficulties of determining profits attributable to the permanent establishment, which may be created by activities of the sales agents will remain. That profit determination is often problematic due to the lack of information in Africa and complexities of applying transfer pricing rules (by analogy) in these transactions.

7.2.5 The routine distributor functionality profile is too narrow as in some source jurisdictions, and it is not uncommon to find a distributor carrying out sales and marketing activities and exploiting group intangibles. Additionally, the distributor may be performing activities which enhance the existing intangible or lead to the creation of new marketing intangibles such as customer lists. Therefore, excluding all distributors who carry out any Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) functions on intangibles will be too narrow in scope.

7.2.6 In addition, if distributors are excluded from the scope of Amount B because they bear economically significant risks, a large number of African distributors may be out of scope as often distributors assume significant foreign exchange risks and other entrepreneurial risks such as market and inventory risks.

7.2.7 The current proposal for a definition based on a limited risk distributor would be too narrow in scope to be effective in increasing tax certainty in African countries.

7.2.8 The current proposal for calculating the Amount B is to determine a fixed return for marketing and distribution activities as a percentage of sales. The fixed return will be determined in line with the arm's length principle and will further consider regional, industry and functional differences.

### *7.3 **Tax Certainty for Amounts B and C***

7.3.1 Tax certainty is a key component of Pillar One and which provides for innovative dispute prevention and dispute resolution mechanisms.

7.3.2 For Amount A purposes, the dispute prevention mechanism is expected to be implemented through a panel mechanism. The panel would be made up of tax administrations, working with the MNEs in scope to provide the so-called early tax certainty by agreeing on: (i) the tax base, in particular where there is business line segmentation; (ii) the result of the implementation of the formula, and (iii) any other feature of the new taxing right, including the paying entities and elimination of double taxation.

7.3.3 In the event a dispute related to Amount A arises and is not dealt with by the Amount A dispute prevention process, the proposal is to have an appropriate mandatory binding dispute resolution mechanism to address those issues. In addition, there is a proposal to implement this mandatory binding dispute resolution mechanism in respect of other tax treaty disputes such as transfer pricing and permanent establishment issues.

7.3.4 Most African countries strongly oppose any form of mandatory binding dispute resolution mechanisms for any transfer pricing disputes and permanent establishment disputes other than Amount A. The main concern here is the fact that these countries have a very limited number of transfer pricing and permanent establishment disputes under Mutual Agreement Procedure (MAP); thus, requiring them to engage in the onerous and costly process would be counter-productive.

7.3.5 **African countries should, therefore, support the new proposal that for smaller countries where there are limited treaty disputes, i.e. a low number of Mutual Agreement Procedure (MAP) cases the country will be able to elect whether to enter into a binding mechanism**.

## 8. ACTIONS THE AFRICAN CONTINENT SHOULD CONSIDER TAKING

8.1 There is little political awareness in Africa of the work taking place at the Inclusive Framework or of its potential impact on tax revenues for Africa. It is vital to build that awareness and ensure there is a pan-African position on these issues that can be presented to the larger economies.

8.2 The deadline for reaching an agreement by the Inclusive Framework members on the Pillar One and Pillar Two rules have been extended to mid-2021. Time is therefore very short, and Africa must act now at a political level if it is to ensure the new rules are fit for purpose in Africa.

8.3 To start building that political awareness ATAF is working with the African Union Commission and the latter has convened an Extraordinary STC from 1st to 3rd

December 2020 where African Finance Ministers will discuss developing a Pan-African position on these issues to address the risks to African tax bases, and provide policy direction on how best Africa is to position itself in the global tax debate.

8.4 Issues expected to be discussed and resolved upon will be centred around outcomes envisaged and articulated in the $4^{th}$ High-Level Tax Policy dialogue held in August 2020. In broad, these outcomes speak to mobilising a unified political voice through the African Union as a measure of counter-balancing the current status of IF discussions.

8.5 Also, the policy framework for illicit financial outflows should be an agenda that is framed not only from a policy prism but also a political prism as this will provide the necessary political will necessary to implement reforms.

8.6 Further actions which ought to be taken by the continent may summarily be outlined as follows:

8.6.1 African countries should speak with one voice for a cohesive approach to the global solution. In this regard, the African Union (AU) should play a critical role in providing the much-needed political support and leadership on the ongoing discussions on consensus-based solutions.

8.6.2 Once the aforementioned meeting of African Finance Ministers has taken place, the AU should provide political support on the positions taken through amongst other actions; making political pronouncements on critical issues on the proposals; engaging other global political organs such as the United Nations, Economic Blocks such as the EU for political negotiations of the new taxing rights and measures to redress the current imbalance in the allocation of taxing rights between the source and residence states.

8.6.3. The continent should engage in a concerted and coordinated effort to systemically bring the informal sector players into the tax net through financial inclusion programmes, civic duties education programmes including tax education, business education with a focus on basic record keeping and business or trade licensing processes that do not place an undue burden on the informal sector operators. Improvements in efficiency will also include minimising the opportunities for tax evasion or avoidance through the implementation of effective compliance risk assessment framework, legislative reforms to block loopholes that enable Base Erosion and Profit Shifting (BEPS) and effectively operationalising all the available Exchange of Information (EOI) frameworks.

8.6.4. There should be a focus on developing internal capacities to mitigate evolving challenges in the world of taxation. This can be partly achieved through support by ATAF, which is already building capabilities of many African tax administrations.

## 9. CONCLUSION

At this critical point in our post-COVID-19 recovery, this Extraordinary Specialised Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration, offers a unique opportunity for African Finance Ministers to delve into the critical issues surrounding the global tax debate.

It is envisaged that African Finance Ministers will provide policy direction that will be in line with a Pan-African solution that promotes Africa's interests, and ensures equitable taxing rights for the continent for decades to come.

I.