WEAVING WEBS FOR TAX AVOIDANCE

Identifying and Mapping Treaties in the East African Community (EAC)

EATGN
OXFAM
Norad
TAX JUSTICE NETWORK AFRICA

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About EATGN

The East Africa Tax and Governance Network (EATGN) comprises civil society organisations (CSOs), academia and individuals with diverse interests in fiscal justice within the East African Community (EAC). EATGN recognises an increasing need for a concise understanding of taxation within public financial management (PFM) debates in each of the member states and across the region. This is because taxation is central to economic growth in relation to infrastructure development, service delivery and wealth creation.

Executive summary

The demand for Double Taxation Agreements (DTAs) has arisen because of various contexts in the region such as:

Constitutionalism plus demands to implement **new public finance management principles**.

Growth in trade and services across countries in the region or with other countries across the globe.

Discovery of **natural resources** requiring more inflows of **foreign direct investments**.

New economic visioning that was conducted at the turn of the 21st century e.g.

EAC Vision 2050	AU Vision 2063	Burundi Vision 2025	Kenya Vision 2030	Rwanda Vision 2050	Uganda Vision 2040	Tanzania Vision 2025

The top ten countries in the world that have signed DTAs in the EAC region are as follows:

4 TREATIES

In first place is South Africa which has 4 treaties in force.

3 TREATIES

India, Zambia, Denmark, and Norway and United Arab Emirates come in second place with 3 treaties each.

2 TREATIES

EAC, Turkey, Canada and United Kingdom all have 2 treaties each.

Kenya has the highest number of DTAs in the region

15

Tax treaties, since the country's independence in 1963.

7

Of the treaties have been concluded and ratified after the passage of the constitution of Kenya 2010 (COK 2010).

DTAs in the region still differ substantially

Regarding the permanent establishment, profits, dividends, interest, management or professional fees, royalties, capital gains, other incomes, and the elimination of the double taxation that are open to exploitation through tax evasion and avoidance. As a result, they are potentially harmful to capital importing countries involved.

Aside from Tanzania, all EAC countries are signatories of the treaty

Aside from Tanzania, which has not ratified the regional DTA, all EAC countries are signatories of the treaty, which has not come into effect because of a lack of consensus. Once Tanzania ratifies the treaty it should be in force.

SECTION 1

Introduction

Photo by EATGN

Background to the Study

On 19-20 August 2019, EATGN participated in an experts' meeting to discuss the ruling on the Kenya-Mauritius Double Taxation Agreement (DTA)[1] and its relevance in different jurisdictions. The meeting provided relevant experts with the opportunity to broaden their understanding of the recent court decision that voided the Kenya-Mauritius DTA.

The meeting also examined the possibilities and limitations of this ruling to craft a future strategy in using the outcomes of the case as a framework to help CSOs pursue tax justice by preventing illicit financial flows in the EAC.

Because of these consultations, EATGN committed to engage in the promotion, training, and research of DTAs at the regional level. This decision was based on the opportunity the ruling against Kenya-Mauritius DTA court case provided in developing a new strategy and advocacy efforts needed in challenging harmful DTAs across the EAC.

Problem statement

The court ruling against the Kenya-Mauritius DTA is a ground-breaking case in which a CSO won against the government. However, there is little understanding of its impact among members of parliament, academicians, non-governmental organizations (NGOs), faith-based groups and members of the public at large who are interested in fiscal justice debates, especially at a regional level.

The ruling temporarily halted the implementation of the treaty, thereby exerting significant policy influence in the revenue arena, and giving prominence to tax justice advocates' advancement of innovations or approaches in the fight for better public finance management.

Considering the traditional dominance of governments in making decisions on what, who, when and how to tax, this ruling has opened space for more stakeholder groups to have a direct bearing on how to influence the trajectory of tax policies henceforth. It is now possible to further influence issues in such exclusive spaces on trade and investment rules or promotion through advocacy endeavours like public litigation that demand strict observance of the constitution as seen in the case of Kenya.

Despite this, there is still a lack of awareness, thus an urgent need to have a wider scope of actors getting more involved in tax discussions in the various East African jurisdictions as a way of getting more momentum behind DTA advocacy efforts.

This can be done through building awareness by evidence generation, and capacity building that would help various entities develop adequate policy and make the issue of DTAs more relevant to the ordinary citizen.

1 In other documentation the agreement has been referred to as the Kenya-Mauritius Double Taxation Avoidance Agreement (DTAA).

It is therefore imperative to ask: what activities and interventions are needed in the medium to long term to push the agenda forward against harmful DTAs in East Africa; what are the political questions linked to the development of DTAs; and how can we develop active participation of broader constituencies in the wider EAC?

Soon after the experts' meeting, a specific need arose to answer two critical questions following further interactions with EATGN members in Burundi on DTA issues. Other than defining what is a DTA, their purpose and their need to interrogate them, EATGN members asked: how many DTAs do their countries have; and which countries have their governments signed DTAs with?

Based on EATGN's commitment during the experts' meeting, this publication is a cursory attempt to begin answering the questions as raised by its members as the beginning of efforts to build contextual evidence, build capacity and publicise the issues surrounding DTAs in East Africa.

Methodology

This study is a desk-based research whose purpose is to understand the general number of double taxation agreements (DTAs) in each of the EAC member States.

The study also conducts a general mapping of the tax treaty network in the East African region.

Using secondary data collected from revenue collecting authorities and ministerial grey literature or websites such as the International Bureau of Fiscal Documentation (IBFD) and International Centre for Tax and Development (ICTD), the study lists the number of treaties and identifies the countries with whom the agreements are signed.

To set the stage for future conversations on subjects such as understanding source vs residence-based principle; treaty shopping; round tripping; principle of tax neutrality and limitation of treaty benefits, the listed treaties had their tax provisions in relation to permanent establishment; profits; dividends; management of technical and professional fees; royalties; capital gains tax (CGT); other incomes and the elimination double taxation.

A short assessment for each country is provided followed by the respective tabulation of double taxation agreements.

Double Taxation Agreement

A Double Taxation Agreement (DTA), also known as double taxation treaty, is a bilateral (two-party) agreement made by countries to resolve issues involving double taxation of passive and active income of each of their respective citizens or entities within their jurisdictions. Such treaties generally determine the amount of tax that a country can apply to a taxpayer's income, capital, estate, or wealth.

DTAs are a subject of interest because of the rising degree of globalisation which has brought about competition between various economies, especially in raising of domestic revenues.

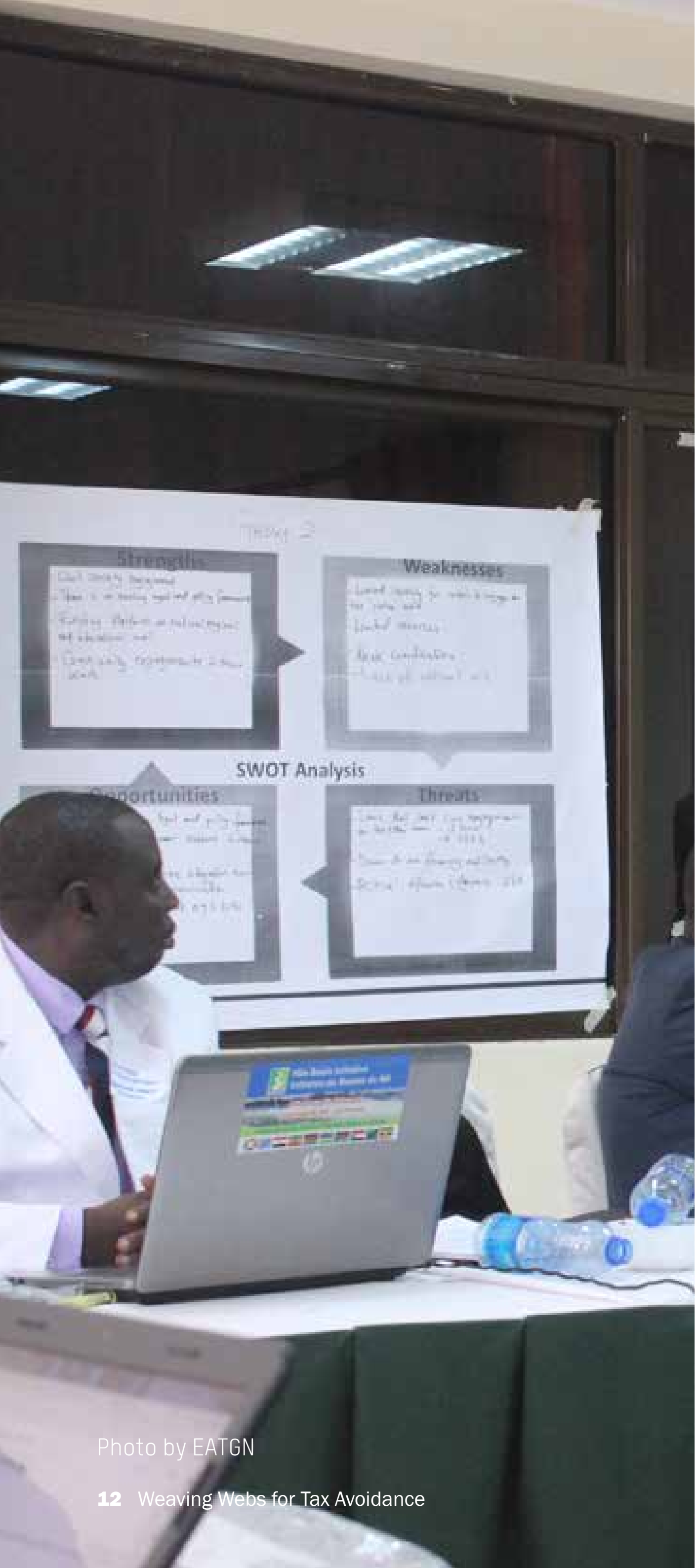

Photo by EATGN

Issues of concern with Double Taxation Agreements[2]

DTAs allow individuals and businesses from one country residing in another country to be taxed only once in each country for the same income. They provide the legal basis for protection of taxpayers against direct and indirect double taxation.

They also protect investments against non-commercial risks such as nationalization, confiscation, foreclosures, freezing of assets, creation of authorized investments and transfer of profits and income in convertible currencies.

DTAs create a legal framework allowing tax authorities to cooperate without violating the sovereignty of other countries or the rights of taxpayers.

However, whereas DTAs have been hailed as enablers of international trade and investment by equitably and efficiently sharing the taxing rights between the participating countries, studies have indicated that DTAs have been used by developed countries for the benefit of their multinational corporations.

Some of the concerns raised regarding tax treaties are discussed below.

1. Source versus Residence-Based Principle – Income is taxed based on either: the relationship of the income (tax object) to the taxing state; or the relationship of the taxpayer (tax subject) to the taxing state based on residence or nationality/citizenship (UN, 2011).

This denotes that a source principle applies where an entity is taxed based on the income in question earned within a country. This is especially applicable to incomes earned by foreign investors in a country. On the other hand, a residence principle denotes that income is taxed on the basis that the taxpayer resides in a country.

There has been a big challenge in balancing questions between the source and residence principles in the development of DTAs. This calls for developing countries to balance the concerns between source and residence issues in taxation while negotiating for a treaty (Mensah, 2017).

2 The following section is borrowed from the Tax Justice Network Africa (TJNA) publication **Trick or Treat(y)?: Kenya's Tax Treaty Giveaways to Tax Havens.**

2. Treaty Shopping – This refers to a situation where a party that is not a resident of either of the contracting states will route its investment through one of the contracting states with a view of enjoying the treaty benefits.

This state often arises where a firm uses the preferential tax advantages and existence of DTAs as a key determinant to geographically route investment.[3] Treat shopping will see firms carry out an analysis of existing treaty networks to determine possible investment routes with a view of determining the one that offers a favourable tax treatment ending up in treaty abuse.

Treaty shopping contributes to instances of tax avoidance leading to loss of tax revenues.

3. Round Tripping – This arises where a resident of one country routes his investments through another country back to his own country as a foreign direct investment (FDI). This often happens where there are often huge tax rate differences or preferential tax treatments between the two countries.

For instance, assume that a DTA between Kenya and Mauritius provides for no capital gains tax for any investment to either country. If Kenya has in place capital gains tax on any investment for local companies, Kenyan investors in this scenario are likely to transfer capital to a Mauritian registered corporate entity. The investors will then invest back into Kenya through the Mauritian entity as "foreign direct investments" to Kenya leading to round-tripping.

These schemes have often contributed to instances of tax avoidance and subsequently led to a review of many DTAs, such as in the case of India which revised its more than three decades old DTA with Mauritius. The revised treaty is meant to curb a situation where firms in Mauritius that invest in India are not just "shell" companies.

4. Principle of Tax Neutrality – It provides that different parties in similar circumstances ought to be taxed using the same rates on similar incomes. The principle of neutrality emphasises that generally, the tax system should strive to be neutral so that decisions are made on their economic merits and not for tax reasons.

However, it is worth noting that in some cases neutrality may be subjected to distortions and, as such, there is a need to measure the extent to which any tax system departs from this principle. Even with acceptable cases of distortions, tax neutrality is often violated in DTA negotiations through tax concessions that are often reached between the contracting states. The preferential tax rates negotiated between the contracting states fail to take into consideration the impact on other taxpayers operating in similar economic situations but not subject to the DTA in question.

Tax systems are geared towards raising the revenue needed by the government in order to provide public services. Thus, there is need to ensure that these goals are attained without distorting decisions of individuals and firms that otherwise could have been made purely for economic reasons (Furman, 2008).

5. Limitation of Treaty Benefits – This stipulates that reduced withholding rates and other treaty provisions apply only to companies that meet specific tests of having some genuine presence in the treaty country (such as a minimum share of ownership by its residents or a minimum level of income from conducting an active trade or business there) (IMF, 2014).

Most treaties have been abused based on who should the tax benefits contained therein apply to. This has raised concern, especially where multinationals have set up box offices with no genuine presence in given jurisdictions primarily to take advantage of the treaty benefits.

The inclusion of a provision on limitation of benefits in a double taxation treaty will contribute towards mitigation of treaty abuses where investments are routed through given jurisdictions to benefit from the existing treaty.

The Mauritius treaty signed by Kenya has not incorporated limitation clauses to safeguard against the imminent abuse of the treaties. A situation such as this often happens because, in practice under international law, domestic laws become subordinate to the international law being implemented.

The above concerns have been highlighted by TJNA over the Kenya-Mauritius tax treaty whose enforcement is currently subject of court determination. TJNA has queried the constitutionality of the Kenya-Mauritius tax treaty, arguing that the treaty making process contravened Article 10 and 201 of the constitution.

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3 Hong, Sunghoon. "Tax Treaties and Foreign Direct Investment: A Network Approach." **Proceedings. Annual Conference on Taxation and Minutes of the Annual Meeting of the National Tax Association** 109 (2016): 1–43.

The subject of tax treaties, their effect on revenue mobilisation and their use in facilitating illicit financial flows, especially in developing countries, remains critical and of interest. Findings from the HLP Report on Illicit Financial Flows from Africa identify tax treaties as one of the key avenues through which illicit financial flows take place. (HLP Report 2015).

Further, the IMF Policy Paper of 2014 cautions developing countries on issues that arise when signing double tax treaties and the need for review if the intended objectives of signing a treaty can be achieved through existing domestic law (IMF, 2014).

This caution has been reiterated in a report released by ActionAid in 2016 which points out that developing countries are losing more in tax revenues through the treaties that have been signed (Action Aid, 2016).

Despite the concerns raised in the on-going court case on the ratification and enforcement of the Kenya-Mauritius double tax treaty and findings from various studies, Kenya continues to sign and ratify tax treaties on the premise of promoting international trade and investment.

This is against the fact that there is no tangible evidence that the already existing DTAs have contributed to the increase in investment and that investors from such countries could have suffered significant instances of double taxation were it not for the DTA.

Worse off is the fact that according to the Corporate Tax Haven Index (CTI) 2021, Mauritius[4] has been placed in the top 15 extensive and most aggressive jurisdiction helping the world's multinational enterprises escape paying tax, and, therefore, erode the tax revenues of other countries around the world.

Further, the taxation regime in Mauritius has been characterised by low tax rates, which makes it more or less a tax haven. A wide disparity of tax rates with such a contracting state in most cases presents a challenge in the distribution of taxation rights.

Tax havens will always negotiate for low tax rates which may be like their own existing domestic rates while the country with higher tax rates will be pushed towards the low tax rates hence affecting revenue collection for the high-rate state. DTAs with tax havens present the challenge of harmful practices relating to treaty shopping, round tripping, and other forms of treaty abuse.

4 Mauritius stands at position 15 "of the world's greatest enablers of global corporate tax abuse", see TJN (Tax Justice Network), **Corporate Tax Haven Index – 2021 Results.** https://cthi.taxjustice.net/en/

SECTION 2

Country Briefs

Burundi Context

Since independence in July 1962, Burundi has constantly reviewed the tax system which was in place during the colonial period.[5]

The law of 21 September 1963 on the taxation of income has been revised several times from 1976 to 2011. In 2013, a new law[6] provided further updates to make business more conducive following considerations on the evolution of practices surrounding double taxation plus certain forms of tax evasion.

DTAs are supposed to be concluded and implemented in a win-win context based on the spirit of good faith spirit. DTAs primarily affect direct taxes and most indirect taxes. Therefore, citizens need to be informed about the formation of each tax agreement. Tax provisions must be non-discriminatory, contribute to the promotion and security of businesses, being understood that any conflict arising between an economic entity -involving the state- can be resolved amicably and therefore at lower costs.

Burundi has ratified its agreement with the East African Community (EAC). The agreement was adopted on June 3, 2020, by the parliament and ratified by Burundi, in accordance with the constitution. There are, however, three other agreements, with the Arab Republic of Egypt,[7] the United Arab Emirates (UAE) and Turkey, in the adoption process. The treaties with the UAE and Turkey are at an advanced stage of approval by the Council of Ministers, with some extent of implementation.

It should be noted that the agreement signed between the Republic of Burundi and the UAE is the most detailed and the most comprehensive compared to other agreements in the process of being adopted. The taxes granted referring to the DTA with UAE relate to income taxes and corporate taxes. For Burundi, the agreement refers to income tax. This is in anticipation of the prospects in the hydrocarbons sector.

The income referred to in the agreements includes the following as captured on the following page.

DTAs are an important channel for the exchange of information and mutual assistance between tax administrations to combat fraud or avoidance practices. In Burundi the approval of DTAs follows a legal process and must be within the purview of the constitution.

5 Law of 21 September 1963 on income tax.
6 1/ du 24 janvier 2013 relative aux impôts sur les revenus loi.
7 Email interview, DTA and Governance Expert, International Non-Governmental Organization, Bujumbura, 23 November 2021.

Structure of issues for consideration in Burundian DTAs

1. Income from immovable and movable property
2. Business profits
3. International shipping, land, and air transport
4. Associated enterprises
5. Dividends
6. Interests
7. Royalties
8. Capital gains
9. Independent personal services
10. Dependent personal services
11. Artistes and sportspersons
12. Pensions, annuities, and social other security payments
13. Government service
14. Students, apprentices, and trainees
15. Professors, teachers, and researchers
16. Other income (wherever arising)

Conclusion

Burundi's tax system was inherited from the colonial administration and was applied until 2007. Considerable efforts have been made to modernize it and adapt it to the challenges of globalization. Burundi has recently ratified the tax agreement signed with other EAC states. Other agreements with the Arab Republic of Egypt[8], The Republic of Turkey and the UAE are still under the adoption process.

Overall, source-based taxation applies to non-resident taxpayers while the income of residents (individuals and businesses) is taxed based on their overall benefits. The principle of territoriality only applies to resident taxpayers, while the tax liability of non-resident taxpayers is assessed based on the global principle. It appears clear that in the case of the two countries, Egypt[9] and Turkey:

- Withholding tax rates may be reduced if the non-residents receiving the income are residents of a country that has entered into a double taxation agreement. However, the impact of the tax treaty is likely to vary depending on the facts and circumstances of each case. It appears evident that, transactions carried out in Burundi between entities with the status of a resident are penalized. Tax treaties present the opportunity to correct unfair treatment. However, it is important to carefully check whether

8 Ibid., Email interview, 23 November 2021.
9 Ibid.


Photo by Allan Gichigi / Oxfam

non-residents have the right to use the agreement and which article of the treaty applies to the income.

- Although companies know that they must comply with the letter and the spirit of tax laws in the states where they generate income, many companies engage in restrictive or extensive interpretation of the tax law depending on the position that benefits them. The principle applied about transfer pricing in Burundi is that transactions between or among related parties must be at arm's length. This applies to transactions carried out between members of the same group or between groups. They must cooperate with tax administration and communicate to the tax administration the information required for the determination of the tax due and must be carried out check if there was no arm's length transaction. A special arrangement can also be concluded with the tax administration.

- The three conventions analysed are clear on the avoidance of taxation because:
"a co-contracting State which gives residence to a national of the other State (non-resident), authorizes him to levy and withhold income tax on that resident for an amount equal to the income tax paid at home. In addition, this state is authorized to tax residual income which corresponds to the difference between the tax rates in the co-contracting states, considering the exempt income."

The provisions in the Burundian tax law relating to transfer pricing are difficult to apply because the country has not adhered to the various international mechanisms relating to the exchange of information between states for tax purposes. It has also not signed agreements on bilateral cooperation in international tax cooperation. Waiting for the establishment of clear strategies, the tax administration has obtained the prerogatives[10] to issue legally binding advance rulings on transfer pricing.

- Fight against trafficking in losses. Losses for a year are normally carried forward and absorbed over five years and six years for mining companies. To avoid concealing income by declaring losses, no loss should be reported in the case of a change in ownership of the company by more than 25% of the shares or voting rights.

- DTAS could reduce if not eliminate inequitable treatment and discrimination in cross-border transactions and in investment decisions.

- The three DTAs create a framework for the taxation of taxpayers and their nationals on agreed bases whenever they find themselves in the same circumstances to favour them. They are called upon to cooperate, exchange information and resolve any disputes or grievances that may arise. Finally, these agreements safeguard the independence of each state because it is not obliged to grant preferential treatment under these agreements.

10 Art. 9 of the O.M. n ° 0540/1776 of 12/31/2013 relating to transfer pricing control.

Burundi Assessment

Burundi is the only East-African country that has no tax treaties in force. Nonetheless it has negotiated, signed and ratified several tax treaties. Although these tax treaties might come into force in the near future, they are currently not in effect.

The two bilateral tax treaties negotiated and concluded are with Turkey (2016) and the United Arab Emirates (2017). The other tax treaty of which Burundi is party is the East African Community tax treaty.

The tax treaty with the United Arab Emirates was concluded and signed in 2017. This tax treaty is one of the most restrictive tax treaties of the East-African countries under analysis. With regard to permanent establishment, physical presence, such as a building site or construction project, will be constituted as a permanent establishment after six months. Furthermore, the tax treaty does not include any UN tax treaty model article that could provide more taxation rights to the source country.

For example, the treaty does not include a service PE; many items (such as delivery facilities and delivery stock) will not constitute a permanent establishment. Also, important articles such as the "limited force of traction" are not included in the tax treaty.

Tax treaties can have important consequences for the right of the source state to levy withholding tax. In the absence of a tax treaty, withholding tax in Burundi for non-residents is 15% for dividend, interest, royalty payments and technical and management service fees. Following the tax treaty with the United Arab Emirates, the right to levy withholding taxes is fully granted to the state of residence of the owner, wherever the owner of the dividends, interest and royalties is.

In other words, the source state has no right to levy withholding tax on dividends, interest, royalties. The tax treaty does not provide for an article on technical services fees. Income from services derived by an enterprise is therefore taxable exclusively by the state in which the enterprise is resident unless the enterprise carries on business through a permanent establishment in the other state (the source state).

The article that determines the taxation rights over capital gains provides some leeway for the source state. For example, gains from the alienation of shares (related to value from immovable property located in that state) may be taxed by the source state. Also, gains from the alienation of shares in a company may be taxed by the source state, but only if the gains from the alienation of shares is derived for more than 50 per cent of their value directly or indirectly from immovable property.

This does, however, not apply to gains from the alienation of shares of a company listed on recognized stock exchange of one of both countries or to gains derived from the alienation of shares following a corporate reorganization.

The tax treaty with Turkey was concluded and signed in 2016. However, the treaty is not yet in effect. There is no publically available text of the Turkey-Burundi tax treaty.

Photo courtesy of Pixabay

PERMANENT ESTABLISHMENT (P.E.)

ROYALTIES

Taxing rights are given to the State where the recipients reside.

EAC

15% Tax charged on royalties for non-residents

30% Tax charged on royalties as normal income for residents

TURKEY

The State where the interests arises has taxing rights according to national tax law, without exceeding 10% of the gross amount of royalties.

EGYPT

20% Egypt

15% Burundi: Tax charged on royalties for non-residents

30% Burundi: Tax charged on royalties as normal income for residents

UAE

The residence state of the recipient of royalties has sole taxing rights.

DIVIDENDS

EAC

The host State also has taxing rights, for e.g. Burundi:

Non-residents:(15%)

Resident to another resident: 30% Non-residents:15%.

EGYPT

Taxation according to the criteria of PE (individuals and corporates)

Egypt: 10% on dividends paid to non-residents.

Burundi 15% for non-residents and 30% to residents.

TURKEY

The other State has taxing rights limited to:

5% of the gross amount of dividends (the beneficial owner should have 25% of the capital of the company paying dividends);

15% of the gross amount of dividends in all other cases.

UAE

The recipient State has taxing rights.

INTEREST

EAC

The State in which the business company is situated (residence) has the taxing rights.

The host State has also taxing rights.
Tax charged on interests for non-residents: 15%.
Tax charged on interests for residents: 30 %.

Exception: Interests are exempted when it is derived or when the effective owner is the government, a political subdivision, a local authority or institution/body/board entirely owned by the government.

Turkey

The State where the recipient (beneficial owner) resides has taxing rights.

The State where the interests arise has taxing rights according to national tax law, without exceeding 10% of the gross amount of interests.

Interests paid to government entities in both States or Central banks are exempted (0%).

Egypt

The State where the recipient is resident has the taxing rights.

Non-residents (Egypt):
Application of Tax agreement or tax payment for 20% on interests derived on loans (less than 3years)
Burundi: 30%

UAE

State where the recipient is, has the taxing rights.

CAPITAL GAINS

EAC

Host State has taxing rights on all kind of gains.

15%	30%
for non-residents	for residents

TURKEY

- Hosting State and the other State have taxing rights (taxable in the State where the immovable or movable property and other gains are situated or generated).
- The State (where the alienated property is situated) has exclusive taxing rights.

EGYPT

The State where the recipient is resident has the taxing rights

20%	15%	30%
Egypt	Burundi non-residents	Burundi residents

UAE

State where the property is, has taxing rights.

OTHER INCOMES

EAC

- All other income is taxed and retained where the taxpayer has residence.
- The host has also taxing rights when the permanent establishment is present.

TURKEY

- The State where the recipient has residence has taxing rights, including income gained on a period of less than 183 days, remuneration paid to non-residents or not attached to a PE or a fixed regular base.
- The other State also has taxing rights remuneration derives from activities which are exercised in that State.

EGYPT

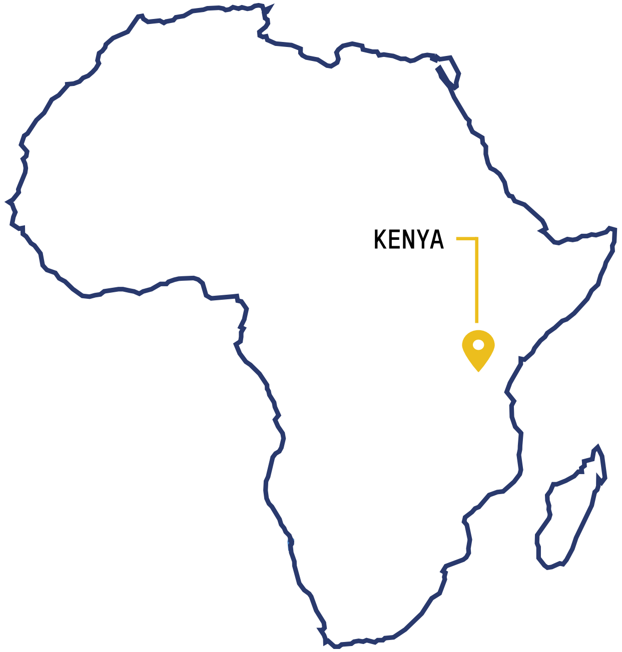
- All other income is taxed and retained where the taxpayer has residence.
- The Host also has taxing rights where the permanent establishment is present.

UAE

- Other income is taxed according to the resident's State.

MANAGEMENT OF PROFESSIONAL FEES

EAC	TURKEY	EGYPT	UAE
Management fees are taxable in the residence state They may however also be taxed in the state in which they arise. Withholding tax charged for non-residents is: 30% (Burundi) while tax charged for residents is 15%. A lower withholding rate of 10% on the gross amount of management and professional fees applies where the recipient is the beneficial owner of the management and professional fees.	The State where the recipient resides has taxing rights. The other state also has taxing rights when services rendered are attributable to a fixed base.	Egypt: When paid by corporates, tax deducted up to 13% of either the loan amount or the company's issued capital Burundi: Residents: 30% Taxing rights are given to the state where the recipient has residence Non-residents: 15%.	There is no provision on the taxation of management and professional fees.



Kenya Context

DTAs have been argued to be necessary for purposes of assisting parties to what may be deemed as an "unfair" tax obligation that arise when one entity is trading in multiple jurisdictions. However, it appears in Kenya's case, that instead of having a fair agreement, it is normally skewed towards the capital producing country thereby causing significant tax base erosion to the country receiving the capital.

In Kenya, revenue raising measures are governed by the constitution as well as various other legislation. DTAs normally affect matters of direct taxes as most indirect taxes are destination based hence making it nearly impossible to justify entering DTAs that affect indirect taxes.

Under the Treaty Making and Ratification Act 2012, it is expressly provided that not only should competent people negotiate treaties but also that the negotiations shall be bound by the constitutional principles and regulatory impact of the treaty being negotiated. In the spirit of constitutionalism, it is expected that there should be publicly available information on the negotiating team as well as the considerations of entering the treaty.

The constitution has put in place guidelines on public finance management. Raising of revenue through taxation is one of the mandates of the government. Article 210 of the constitution provides that, where any legislations permit a waiver of tax, there is a requirement that there be a public record of each waiver granted and the reason for each waiver. There is a further reporting obligation that these records shall be kept and the same should be presented to the auditor general.

Some of the principles espoused in article 201 on public finance include:

Requirement for openness and accountability, including public participation in financial matters.

Fair distribution of the taxation burden.

Under the Income Tax Act (ITA) of Kenya, the responsibility to give waivers rests squarely on the minister who has an obligation to lay any DTA that is ratified before parliament.[11] From 2010, Kenya has concluded 14 DTAs (See attached schedule).[12] The following are some of the relevant features concluded from this tabulation:

1. **Permanent Establishment (PE)** – While most of the DTAs were in line with the Income Tax Act (ITA) provisions on the requirement of time to ascertain the existence of a PE, some have a longer period of time exceeding the required duration in the ITA. The DTAs

11 Section 41 of the ITA.
12 Out of these only seven have come into force.

Photo by Allan Gichigi / Oxfam

with Iran, Kuwait, Korea, Mauritius, and Netherlands all have a requirement of more than 6 months to presume the presence of a PE.[13] The consequence of this is that it affords entities with projects in Kenya shorter than 6 months to avoid liability for tax on income that has been derived from Kenya.

2. **Profits** – It is observed that taxation of profits is tied to the existence of a PE and if a PE does not exist then the profits will be taxed in the other state.

3. **Dividends** – In Kenya dividends are charged a 5% withholding tax (WHT) which is a final tax, however for non-residents, the WHT is set at 10%. Most DTAs have the effect of reducing the amount chargeable on dividends to a maximum of 5% therefore occasioning a loss of some tax revenue that other non-residents pay in the absence of a DTA.[14]

4. **Management of technical and professional fees** – It was noted that in the DTAs that provided for this, the tax rate was significantly reduced with Kenya allowing a maximum of 12.5% with the rest capping the tax rate at 10%. This should be analysed against the backdrop that this type of income would ordinarily attract a tax rate of 20%.[15]

5. **Royalties** – The taxing right for this is given to the state where the recipient resides with the host country (Kenya) being given a right to tax up to a maximum of 10%, whereas this type of income would ordinarily attract 20%.[16]

6. **Interest** – The taxing right for this is given to the state where the recipient resides with the host country (Kenya) being given a right to tax up to a maximum of between 0-20%, whereas this type of income would ordinarily attract 15%.[17]

7. **Capital Gains Tax** – The host state usually has all the taxing rights. Some treaties however grant this right to the residence state.

8. **All other income** – The residence state is often given the right to tax income that has not been covered by the DTA. There are however some treaties that grant source state rights such as the Seychelles, UAE, South Africa, Canada, India, and France treaties.

9. **Elimination of Double Taxation** – If the income has been taxed in the other state it is an allowable deduction and if Kenya has taxed, then the difference is credited to the other state.

Summary

The tax treaties that were negotiated and ratified before 2010 appear to be giving more taxing rights to Kenya compared to those negotiated post the new constitution. It would be expected, with the current accountability obligations under the law, that the regulator, the Kenya Revenue Authority (KRA), should be in a position to tabulate the amount of tax lost and/gained for the existing DTAs that are in force.

In addition to this, citing the provisions of the Treaty Making and Ratification Act 2012, it presumes that a "regulatory impact assessment" is done before the treaty is concluded therefore this information should be readily available.

13 Only the DTAs with Iran and Korea are enforced. The Kuwait, Mauritius and Netherlands DTAs have been signed but not fully ratified.
14 The treaty with Zambia lowers the withholding tax rate to 0%.
15 Whilst we are concerned with the reduced WHT rates, the bigger problem lies in the fact that many DTAs do not allow for WHT on these fees i.e. France, Iran, Qatar, South Africa, UAE, Zambia and South Korea.
16 No taxation rights are given for royalties paid for the use of equipment in the DTAs between Kenya and South Africa/ Sweden.
17 Only the Denmark and Norway treaties have WHT rates capped at 20%.

Kenya Assessment

Of the five East-African countries under analysis, Kenya has most tax treaties in force, 15 in total.

These 15 tax treaties are concluded with Zambia (1968), Denmark (1972), Norway (1972), Sweden (1973)[18], United Kingdom (1973), Germany (1977), Canada (1983), France (2007), South Africa (2010), United Arab Emirates (2011), Iran (2012), South Korea (2014), Qatar (2014), Seychelles (2014) and India (2016)[19].

The Kenyan DTA with Zambia is the oldest tax treaty negotiated by Kenya and largely follows the OECD tax treaty model. In comparison with other tax treaties, this treaty is most restrictive for the source state. For example, rights to levy withholding taxes on qualified dividend, portfolio dividend, interest, royalty and technical services fees payments have not been granted to the source state and rights have been provided fully to the resident state.[20]

Also, almost no articles from the UN tax treaty model have been included in the treaty. Nonetheless, as the tax treaty has been concluded between two economically equal countries, with little bilateral investment, limitation of taxing rights will be relatively equally divided.

Regarding the other tax treaties, the permanent establishment criteria, the minimum length of time for a construction site to qualify as PE, is 6 months for most Kenyan tax treaties. Only the tax treaties with South Korea and Iran define a length of 12 months. With regard to supervisory activities included in the PE, most tax treaties concluded by Kenya allow for the establishment of PE for these activities. It is only the tax treaties with France and South Korea that have not accounted for the inclusion thereof.

An important article for tax treaties is the UN tax treaty model article on Service PE. Only 6, out of the 15, have included the possibility to acquire PE status based on services, following a minimum length of time between 3 and 6 months. As expected, it has especially been the most recently signed tax treaties that have included these articles. Only two of the tax treaties that have been concluded since the 2000s (being the tax treaty with France and South Korea) have not included these articles.

With regard to other important permanent establishment articles, about half of the treaties follow the OECD tax treaty model for the article on the exclusion of delivery stock and facilities from the permanent establishment criteria while the other half follows the UN tax treaty model and opt for inclusion. With regard to the exclusion of other important UN tax treaty model articles in the definition of permanent establishment the treaties with France and South Korea come to the forefront.

Concerning withholding taxes for non-residents, the domestic tax law of Kenya provides for a WHT of 15% on qualified and portfolio dividend payments. WHT on interest is 25% for bearer instruments and 15% for all other cases. Royalty payments and management and professional fees face a withholding tax of respectively 15% and 20%. For the tax treaties, the WHT on qualified dividend payments have been lowered for 9 treaties. The agreed withholding taxes are: 10% (South Africa, India and France), 8% (South Korea) and 5% (Iran, Seychelles, UAE and Qatar).

The taxation rights on portfolio dividend payments, being 25% for non-residents in the absence of a tax treaty, is limited for all source countries in the tax treaties signed after 1983[21]. Especially the tax treaties with Iran,

18 Protocol amending the treaty (1976).
19 Replaces the old 1985 tax income treaty.
20 Important to note, this is only the case whenever if the dividends, interest and royalty payments are subject to tax in the contracting state. Otherwise, there is no reduction under the treaty and the domestic withholding tax rate is applicable.
21 It is 25% or higher in tax treaty with Denmark, Norway, Canada and Sweden.

Photo courtesy of Pixabay

Seychelles and UAE result in limitation of taxation rights on WHT to 5% on portfolio dividend payments for source countries. With regard to interest payments, most tax treaties lower the possibility to charge WHT to either 10%, 12%, 15% or 20%. Most restrictive in this regard are the tax treaties with UAE, Seychelles, Iran, India, Qatar and South Africa (imposing 10%), followed by France and South Korea (12%).

The limitations regarding WHT on royalty payments is similar compared to the imposed WHT rates, with the only difference that France and South Korea also only allow for WHT taxation of maximum 10%. The treaties with South Korea and Sweden make an exception for the withholding tax rate for royalties paid for the use of equipment, which is lowered to 0%. The allowance for source taxation on technical service fees, have only been incorporated in the more older tax treaties signed by Kenya and the tax treaties with Seychelles (2014) and India (2016).

All other tax treaties signed after 1983 do not account for source taxation on technical services fees. It is important to note that the tax treaty with France entails a so-called "most-favored-nation" clause. This clause provides for an automatic reduction in rate if any later treaty with an OECD member allows for a rate on dividends, interest or royalties that is lower than the rate in the treaty with France.

The lowered WHT of 0% on qualified dividends in the tax treaty with the Netherlands (signed but not yet ratified) will also become applicable for France once the tax treaty with the Netherlands is be signed.

Most tax treaties signed by Kenya do not provide the source country for taxing rights on capital gains. However, with regard to the taxation of capital gains on the alienation of shares in relation to immovable property more taxation rights have been provided for the tax treaties with Canada and all tax treaties negotiated after 2007 (with the exception of the tax treaty with Qatar and UAE). Taxation rights on capital gains for the alienation of shares in a company (or comparable interests) have only been provided in the tax treaty with Germany (1977) and India (2016).

As to other important UN tax treaty model articles, such as the articles on taxation of independent personal services, top-level managerial officials and source taxation of other income, the tax treaty with France provides for increased taxation rights for the source country.

Most interestingly, only three tax treaties have included articles / provisions against abuse (anti-abuse rule):

South Korea, Qatar and India. The Article 29 (Limitation of Benefits) of the tax treaty with India and Qatar includes the provision that a resident of a contracting state will not be entitled to the benefits of the treaty if its affairs were arranged with the main purpose or one of the main purposes to take the benefits. The Indian tax treaty furthermore includes the provision that any person, including legal entities, without bona fide business activities will not be entitled to the benefits of the treaty.

A similar provision, however, only directed at the articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Capital Gains) and 22 (Other Income), if (a) the resident is directly or indirectly controlled by one or more persons that are not resident of that State; and (b) the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, debt-claim, or right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment. None of the other 12 tax treaties has included an anti-abuse rule.

The tax treaty network of Kenya is most extensive compared to its East-African peers. Although some DTAs have been concluded with countries that have strong economic relations with Kenya (the UK, South Africa and France) other important investor countries for Kenya have not concluded any DTAs (the United States, Belgium, China, Switzerland and the Netherlands).[22]

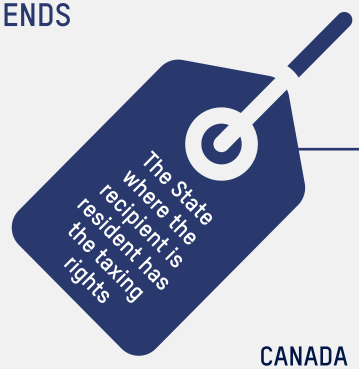
Nonetheless, Kenya has already signed DTAs with the Netherlands and China (they are, however, not ratified), while the DTA with Belgium is currently being negotiated. Of the tax treaties concluded and enforced by Kenya, the tax treaty with South Korea (2014), Qatar (2014), France (2007) and Seychelles (2014)[23] are most restrictive / vulnerable, following important characteristics discussed above[24]. The tax treaty with India (2016) and South Africa (2010), as well as the 1970s treaties with Sweden, and Denmark provide most taxation rights to the source country.

Kenya has the aim to substantially broaden its DTA network in the near future. It has already signed tax treaties with the East African Community (2010), Italy (2016)[25], Kuwait (2013), Mauritius (2012), Netherlands (2015), China (2017), Barbados (2019), Botswana (2019), Ireland (2021), Portugal (2018), Singapore (2018), Thailand (2006). Furthermore, it has already concluded, but not signed, tax treaties with Nigeria, Saudi Arabia, Turkey and Portugal.[26]

22 IMF (International Monetary Fund), Kenya: Selected Issues, African Department, 23 Oct 2018. https://www.elibrary.imf.org/view/journals/002/2018/296/article-A004-en.xml
23 Especially since the domestic corporate tax regime of Seychelles is vulnerable for tax avoidance purposes. Ibid.
24 The DTAs with South Korea and Qatar include anti-abuse articles. However, as noted in a recent IMF study on the international taxation issues of Kenya, they are not to be considered as a 'panacea that cures treaty shopping': **"While it is possible to employ anti-treaty shopping (or so-called limitation on benefit) provisions, the Fund's experience is that it often is possible to circumvent limitations with sophisticated planning or as a result of limited enforcement capacity"**.
25 Treaty originates from 1979, although amended through protocol in 1997.
26 GOK (Government of Kenya), **Double Taxation Agreements**, Ministry of Finance - The National Treasury and Planning. https://www.treasury.go.ke/agreements/

PERMANENT ESTABLISHMENT (P.E.)

DIVIDENDS



CANADA
Where the recipient is the beneficial owner of the shares, the host state may tax.

DENMARK
State in which the recipient is resident has taxing rights.
The host state also has taxing rights.

EAC
There is no minimum holding period for shares to access treaty benefits.

FRANCE
Where the beneficial owner of the dividends is a resident of the residence state WHT is capped at 10%.

GERMANY
There are no participation thresholds nor prescribed holding periods.

INDIA
Where the beneficial owner of the dividends Is resident in the home state, the WHT is capped at 10%.

IRAN
The host State has up to 5% taxing rights.

KOREA
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

NORWAY
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

QATAR
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

SEYCHELLES
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

SOUTH AFRICA
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

SWEDEN
Home state has right to tax.
Host state may also tax but WHT rate capped at 15%.

UAE
Taxing rights are given to the State where the recipient is a resident.
The host State also has taxing rights.

UNITED KINGDOM
Provides for residence state taxation of dividends.

ZAMBIA
Dividends taxable in the residence state.

MANAGEMENT OR PROFESSIONAL FEES

CANADA
The host state may however also tax but the WHT rate must not exceed 15% of the gross amount of income.

DENMARK
The host State has up to 20% taxing rights.

EAC
Management fees are taxable in the residence state. They may however also be taxed in the state in which they arise.

FRANCE
There is no article that deals with management and professional fees.

GERMANY
No reference to beneficial ownership.

INDIA
Where the beneficial owner of the management and professional fees is resident in the home state, the WHT is capped at 10%.

IRAN
N/A

KOREA
No provision relating to taxation of management and professional fees.

NORWAY
Taxing rights given to State where the recipient resides. The host state however may also tax an amount not exceeding 20%.

QATAR
No provision relating to management and professional fees.

SEYCHELLES
Where the beneficial owner of the management and professional fees is resident in the home state, the WHT is capped at 10%.

SOUTH AFRICA
No provision on management and professional fees.

SWEDEN
The host also has the right to tax with a WHT rate is capped at 20%.

UAE
No provision on management and professional fees.

UNITED KINGDOM
Provides for residence state taxation of management and professional fees.

ZAMBIA
No provision for management and professional fees.

Case Study Kenya

Civil society organisations go back to court over Kenyan double taxation agreements

Tax Justice Network Africa (TJNA) and Katiba Institute (KI), on 24th September 2020, filed a constitutional petition at Human Rights Division of the High Court of Kenya. The petition concerned 10 Double Taxation Agreements (DTAs) signed between Kenya and the following countries: Iran; Kuwait; Seychelles; South Africa; Qatar; Korea; the United Arab Emirates (UAE); India; the Netherlands and Mauritius.

The petitioners are asking the court to:

1

Overturn the decisions by Cabinet Secretary (CS) for the Ministry of Finance and National Planning (Treasury) to enter into the 10 DTAs

2

Declare the powers of the CS Treasury to enter DTAs unconstitutional

3

That the failure of the CS Treasury to subject the DTAs to the ratification process in accordance with Treaty making and Ratification Act (TRMA) of 2012 is unconstitution

4

That an order be made directing the CS Treasury to withdraw the legal notices embodying the 10 DTAs

5

That a declaration be made that the legal notices embodying the 10 DTAs are void for failure to comply with Statutory Instrument Act of 2013 (STA2013) and TMRA2012

Questions surrounding DTAs need to be urgently addressed in a decisive manner. This is especially the case if one is to consider the recent revelations concerning how Kenyan companies abuse DTAs to avoid paying taxes in the country. For example, recent revelations have alleged how betting giant Sportpesa avoided payment of taxes through the transfer of USD 53 million to the United Kingdom. This was done under the guise of the local subsidiary paying the UK subsidiary for “IT and services” used in its Kenyan operations.

Kenya’s emerging DTA network has exposed the country by promoting financial secrecy and opacity in the negotiation of these 10 treaties, and their linkages to tax havens.

Notably, 4 of the 10 countries cited in the petition (Seychelles, South Africa, Netherlands, and Mauritius) are ranked by the Tax Justice Network (TJN) Corporate Tax Haven Index 2021 as the most aggressive and extensive tax haven jurisdictions that are used by multinational enterprises to avoid paying tax, thereby eroding revenues of other countries, more so in the developing world.

Likewise, 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.

This is approximately, KES 6 trillion which is more than double the Budget for FY2020/21 a large opportunity cost for service delivery.

Ultimately the purpose of the petition is to:

1. Ensure that all tax treaties follow due process including parliamentary scrutiny and public debate under the TMRA 2012.

2. Nudge government on the constitutionality of publicly evaluation of tax treaties as specified in the TMRA2012. This is necessary, especially because DTAs entail a restriction on tax sovereignty and have major revenue implications; they grant tax benefits and exemptions to foreign investors not available to Kenyan citizens or companies, resulting in reduction of government revenue. They also directly affect domestic public finances and the sharing of the burden of taxation.

3. To establish as a matter of precedence the revenue implications of the various benefits and exemptions in tax treaties. Such an understanding, through constitutionally entrenched evaluation, would assist in determining the kind of balance needed for or against the possible benefits of attracting investment from abroad.

4. To contextualise the examination of Kenyan DTAs within the global processes of re-evaluating international tax rules. These include treaty provisions, resulting in a consensus on minimum changes that should be introduced into existing treaties and included in new treaties, as well as additional recommendations, some already agreed and some under negotiation. Kenya is playing a significant part in these international discussions, which makes its actions also a matter of considerable public interest and concern.

Once the constitutional issues, evaluation of existing treaties in relation to Kenyan tax architecture, impact analysis on the risk of revenue loss and global context are considered the government will no longer pursue DTAs without a policy in place.

Further, the government will initiate DTAs in a transparent manner, according to the tenets of the constitution and involve parliament by providing a transparent cost benefit analysis of each DTA for the purposes of decision-making.

Rwanda Context

In economic terms, it is generally argued that Double Taxation Agreements (DTAs) offers some substantial benefits to individuals and businesses that have international income. A Double Taxation Agreement (DTA) is essentially an agreement between two countries that determines which country has the right to tax "the business" in specified situations. The purpose behind this is to avoid double taxation.

This is applicable for a resident of one country to have income that arises in a second country. The agreement may state, for example, that certain types of capital gains should only be taxed in the country of residence, as opposed to the country where the asset is located. Or it may specifically provide for tax paid in one country to be deducted from the tax bill in another country. The main objectives of DTAs are to prevent incomes from being taxed twice.

Rwanda has entered into DTAs with various countries. Most of the DTAs are modelled on the Organization for Economic Co-operation and Development (OECD) Model Tax Convention and include non-discriminatory provisions. Cases in point are the DTAs with South Africa, Morocco, Belgium, Singapore, and Barbados.[27]

Each of these DTAs contains an expense-related non-discrimination provision similar to Article 24 Paragraph 4 of the OECD Model Convention with Respect to Taxes on Income and on Capital. The ownership-related non-discrimination provision under various DTAs to which Rwanda is party reads as follows:

> **"Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected."**

A closer look at the provisions above indicates that Rwanda is, under the relevant DTAs, expected not to subject Rwandan enterprises owned and/or controlled by residents of other contracting states to more burdensome taxation and requirements connected therewith than those enterprises controlled by Rwandan residents is subjected to.

In this regard, if a Rwandan enterprise controlled by Rwandan residents is allowed to deduct management and technical fees, and royalties paid to its controlling resident persons without any restriction other than those relating to the arm's length principle (ALP), denying the same treatment to an enterprise controlled by residents of the other contracting State in its dealings with the

27 It should be noted that the DTA with Morocco and Barbados are not yet in force.

latter may arguably be construed as discrimination in terms of the ownership-related non-discrimination provisions of the relevant DTAs.

It is important to note that, according to the Rwandan Constitution, ratified international treaties become part of domestic laws and can be relied on before Rwandan courts. This is entrenched in Article 168 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 (the "Constitution") which unequivocally states that:

> **"upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation……"**

In Rwanda, taxation on income is currently governed by the Income Tax Law No. 016/2018 of 14/04/2018 enacted by the Parliament of Rwanda on 13 April 2018. The law aims at streamlining the administration of taxes on income and to address gaps and grey areas in interpretation associated with the repealed (previous) income tax law.

According to this law, the taxable income of a person is that person's total income for the tax year less the total amount of deductions allowed for that person.

Taxable income comprises the following:

- Employment income
- Business profits
- Investment income

Income tax is levied in each tax period on the total income of both resident and non-resident persons earning an income in Rwanda. A resident person must pay income tax on all income earned, from domestic and foreign sources. A non-resident person must pay income tax only on income which has a source in Rwanda.

Rwanda's Income Tax Law considers the provisions of DTAs that Rwanda has signed with various countries. These agreements (DTAs) aim to eliminate the double taxation of income or gains arising from one territory and paid to residents of another territory.

They provide for lower withholding rates on payments of dividends, interest, management and professional fees, and royalties between the two territories. Professional advice is required to understand the operation of double tax treaties, as they include legislative provisions that may not be straightforward.

Rwanda is a party to the EAC Double Taxation Treaty and also has Double Tax Agreements (DTAs) with the 7 countries (Barbados, Belgium, Jersey, Mauritius, Morocco, Singapore, South Africa, Turkey and United Arab Emirates (UAE).[28]

The key elements in these Agreements are:

Dividends	Interest payments	Royalties	Technical fees	Permanent Establishment (PE)
Dividends are subject to a maximum withholding tax of 10 % if the beneficial owner is a company which holds at least 25% of the company paying the dividends. In all other cases, the withholding tax will be a maximum of 15%.	Interest payments are subject to a maximum 10% withholding tax.	Gross royalties are subject to a 10% withholding tax.	Technical fees are subject to a 10% withholding tax.	Includes the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the contracting state for a period or periods aggregating more than six months within any twelve months' period commencing or ending in the fiscal year concerned.

28 The EAC treaty, the Barbados treaty and the Morocco Treaty are not yet in force.

Rwanda Assessment

Rwanda has a total of 7 tax treaties in force. Of these seven enforced tax treaties, two have been signed in the early 2000s. All other 6 tax treaties have been signed over the last decade, with exactly one tax treaty concluded annually from 2013 onwards. In the following part the eight treaties will be discussed separately, to highlight the most important characteristics. At the end of this review, some general observations with regard to the DTA policy of Rwanda will be provided.

The tax treaty with South Africa, signed in 2002, is the oldest 'operational' tax treaty of Rwanda. The treaty is restrictive in respect of source taxation rights in some instances, but contains important articles that protects the domestic tax base of the countries involved. For example, the furnishing of services, including consultancy services (a so-called Service PE), by an enterprise through employees or other personnel engaged by an enterprise for such purpose for at least 6 months, will trigger a permanent establishment.

Nonetheless, other important PE articles (set forth in the UN tax treaty model) such as permanent establishment status if business activities are carried on through a dependent agent who habitually exercises an authority to conclude contracts on behalf of an enterprise or the granting of PE status for insurance brokers, have not been included. Furthermore, the tax treaty with South Africa substantially lowers the withholding tax that Rwanda can levy on passive income transactions.

For example, the domestic withholding tax rate of 15% for qualified dividend payments, interest, royalty and technical services fees transactions, that applies in the absence of a tax treaty, have all been lowered to 10%. In some instances, as is the case for royalty payments for the use of equipment, the withholding tax rate is even lowered to 0%. Furthermore, the treaty does not allow for taxation of capital gains with regard to a gain on the alienation of shares of a company, or of an interest in a partnership, trust or estate. Also, the tax treaty does not include an anti-abuse rule.

The tax treaty between Belgium and Rwanda (2007)[29] is somewhat similar to the tax treaty with South Africa. It uses, however, a permanent establishment definition that allows Rwanda to more easily establish sufficient economic linkage to trigger a permanent establishment designation, for example with regard to limited length of duration for Service PE (only three months) and the inclusion of PE status for insurance brokers.

As with regard to the domestic withholding tax rates of Rwanda, they are lowered substantially through the Zambia-Belgium tax treaty. The WHT on qualified dividends, for example, is lowered to 0%, while the WHT on interest, royalty and services fees payments is lowered (in comparison to the domestic rate of 15%) to 10%. The withholding tax on interest payments, in specific circumstances, can even be lowered to 0%. Capital gains taxation for the alienation of shares is accounted for in the tax treaty, although there are limitations with regard to the applicability thereof. The tax treaty with Belgium, as with South Africa, does not provide for an anti-abuse provision.

The tax treaty with Mauritius (2013) is a result of the renegotiation of Rwanda's former, more restrictive, tax treaty with Mauritius (signed in 2001). The 2013 tax treaty is different from the above discussed tax treaties with South Africa and Belgium, and allows for more taxation rights for the source country.

For example, with regard to the permanent establishment criteria, the tax treaty allows to more easily establish sufficient economic linkage to trigger a permanent establishment designation. With regard to the withholding tax rates, this treaty does lower, as with the South African tax treaty, the domestically applicable WHT rates of 15% on qualified dividends, interest and royalty payments to 10%.

As regard the royalty payments for the use of equipment, the WHT is lowered to 0%. With regard to technical services fees, the treaty allows for a WHT of 12%. With an eye to other important clauses (for example on capital gains on the aliention of shares in a company and anti-abuse rules) these are not accounted for in the treaty.

The tax treaty with Singapore (2014) substantially limits the taxation rights of the source country. Although PE status is, for example, provided in the case of insurance brokers, many UN

29 A protocol amending the tax treaty has been agreed upon in 2010. However, the protocol was never ratified. In 2011 a memorandum of understanding was added to the tax treaty that changed some articles of the tax treaty. The review of the DTA between Rwanda and Belgium is based upon the adjusted (and enforced) DTA text.

tax treaty model articles that aim to broaden the definition of PE have not been included. Also, withholding taxes on qualified and portfolio dividends are lowered to only 7.5%, based on the treaty.

As with the South African treaty, interest, royalty and services fees WHT rates are lowered to 10%, with the only exemption for royalty payments for the use of equipment, which is lowered to 0%. The treaty furthermore generally follows the OECD tax treaty model, except for a limited number of articles (for example, it allows for source taxation of other income). No anti-abuse rule is provided for in the tax treaty. As can be observed, the tax treaty with Singapore is one of the most restrictive tax treaties of Rwanda.

The treaty with Jersey (2015) incorporates a broad definition with regard to PE, including Service PE (6 months), supervising activities, agents maintaining a stock and insurance brokers. With regard to the withholding tax rates, the treaty lowers the WHT rates on qualified dividends, royalties and interest to 10% while lowering the WHT on management or professional fees to 12%. The treaty with Jersey allows for a so-called "Limitation on Benefits" provision (anti-abuse rule) which specifically addresses the articles on dividend, interest and royalty payments.

The tax treaty with UAE (2017) is moderately restrictive for Rwanda. Concerning the permanent establishment criteria, a Service PE (6 months) is included, as well as several UN tax treaty model articles (for example, the article on dependent agent extension to PE and the article on limited force of attraction. With regard to the WHT, rates are lowered to 7.5% for dividend payments and to 10% for interest, royalty and management or professional fees payments.

Compared to the other treaties, the UAE treaty gives substantial room for the taxation on capital gains. Similar to the treaty with Jersey, a limitation on benefits provision (anti-abuse rule) in included that addresses the articles on dividend, interest, royalty and management or professional fees payments.

The last treaty signed and ratified by Rwanda was with Turkey (2018). Like all other tax treaties signed by Rwanda, a Service PE is included (6 months). Next to that, several UN tax treaty model articles have been included to expand the definition of PE. With regard to the withholding tax rates, as similar to other Rwandan tax treaties, dividends, interest, royalty and technical service fees transactions are taxed at a maximum of 10%.

With regard to other important articles, the Rwanda-Turkey tax treaty allows for the taxation of capital gains, both with regard to alienation of (im)movable property situated in the state as with regard to alienation of shares derived from immovable property situated in the state, although bound by specific limitations. As with all latest tax treaties concluded by Rwanda, a specific anti-abuse rule (article 29 – entitlement of benefits) is included, that aims to limit the benefits of the tax to non-abusive arrangements and transactions.

Rwanda has signed and fully ratified tax treaties with 7 countries. Most of the tax treaties do apply substantially restrictive permanent establishment criteria. However, with regard to specific UN tax treaty model articles, for example on the inclusion in supervisory activities in PE or Service PE, these have been included in all tax treaties.

Concerning withholding tax rates, these have been lowered relative to the non-treaty withholding tax rates applicable in Rwanda, in most cases from the applicable 15% to 10%. In some tax treaties qualified dividends WHT rates have been lowered to 7.5% (as is the case for the tax treaty with Singapore and UAE) or even 0% (Belgium) whereas royalty payments for the use of equipment have been lowered to 0% in other treaties (South Africa, Singapore and Mauritius).

Capital gains taxation is limited, in most instances, to the residence state (only the tax treaties with UAE and Turkey provide more room for source taxation with regard to capital gains). All treaties do include the source taxation of either management or professional fees, technical fees or technical service fees (between 10% and 15%) and provide for source taxation of other income. It is furthermore observed that anti-abuse rules have only been implemented in the latest three tax treaties negotiated by Rwanda.

Rwanda has furthermore concluded tax treaties with the following countries: Barbados (2014), Morocco (2016), United Arab Emirates (2017), Democratic Republic of Congo (2021), Qatar (2021) and (2021). These tax treaties have not been (fully) ratified and are therefore currently not enforced.

Of the seven enforced tax treaties signed by Rwanda, four (Jersey, Singapore, UAE and Mauritius)[30] are ranked in the Corporate Tax Haven Index of the Tax Justice Network.[31] Some of these countries' economies are very limited in size (Jersey and Mauritius), therefore having a low chance of providing Rwanda with increased genuine foreign investment. It is furthermore observed that Rwanda has generally not negotiated DTAs with its main investors countries. The countries that have invested most heavily in the economy of Rwanda are Portugal, the UK and India.[32]

30 Furthermore, Barbados, with whom Rwanda has concluded a tax treaty (although not yet enforced), is also considered a low-tax jurisdiction by many experts.
31 Op. Cit, **Corporate tax Haven Index – 2021 Results.**
32 BBC (British Broadcasting Corporation), **The rise of Turkish investment in Rwanda**, 26 January 2021. https://www.bbc.com/news/av/business-55806760

Photo courtesy of Pixabay

PERMANENT ESTABLISHMENT (P.E.)

DIVIDENDS

The State where the recipient is resident has the taxing rights

MAURITIUS
Where the recipient is the beneficial owner of the shares, the host state may tax.

TURKEY
State in which the recipient is resident has taxing rights.
The host state also has taxing rights.

UAE
There is no minimum holding period for shares to access treaty benefits.

BELGIUM
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

JERSEY
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

SINGAPORE
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

SOUTH AFRICA
Taxing rights are given to the State where the recipient resides.
The host State however may also tax.

MANAGEMENT OR PROFESSIONAL FEES

BELGIUM
Technical fees taxed in the residence state. Source state may also tax but the WHT is capped at 10 per cent of the gross amount of the interest.

JERSEY
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 12% taxing rights.

MAURITIUS
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 12% taxing rights.

SINGAPORE
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 10% taxing rights.

TURKEY
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 10% taxing rights.

SOUTH AFRICA
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 10% taxing rights.

UAE
State in which recipient resides is where management/ professional fees is taxed. The host State has up to 10% taxing rights.

INTEREST
ALL COUNTRIES

Interest taxed in the residence state.
Source state may also tax.

WHT Capped at
10%

OTHER INCOMES
ALL COUNTRIES

Any other income is taxed in the residence State.
The host State also has taxing rights.

ROYALTIES
ALL COUNTRIES

Taxing rights are given to the State in which the recipient resides

Host State has up to 10% taxing rights

Tanzania Context

In identifying the features of existing DTAs in Tanzania, 9 DTAs were examined resulting in the following significant characteristics being noted:

1. **Permanent Establishment (PE)** – While most of the DTAs were in line with the ITA provisions on the requirement of time to ascertain the existence of a PE, Italy's DTA has a longer period exceeding the time in the ITA at 12 months. The remaining DTAs all have a requirement of more than 6 months to presume the presence of a PE. The consequence of this is that it affords entities with projects in Tanzania shorter than 6 months to avoid liability for tax on income that has been derived from Tanzania;

2. **Profits** – It was observed that taxation of profits is tied to the existence of a PE and if a PE does not exist then the profits will be taxed in the other state;

3. **Dividends** – In Tanzania, dividends are normally charged a 10% withholding tax (WHT) which is a final tax, both for residents and non-residents. All DTAs (except Zambia) do not have the effect of reducing the amount chargeable on dividends as tax rates start at 10% but the DTA with Zambia exempts tax on dividends therefore, occasioning a loss of some tax revenue that other non-residents pay in the absence of a DTA;

4. **Management of technical and professional fees** – It is noted that in the DTAs that provided for this, the tax rate was significantly increased with Tanzania allowed a maximum of 20% compared to withholding taxes of 5% for resident taxpayers to 15% for non-resident taxpayers. However, this should be analysed against the backdrop that this type of income would ordinarily attract a tax rate of 30%;

5. **Royalties** – The taxing rights for this are given to the state where the recipient resides with the host country (Tanzania) being given a right to tax up to a maximum of 20%, whereas this type of income would ordinarily attract 30%;

6. **Capital Gains Tax and all other income** – The host state has all the taxing rights;

7. **Elimination of Double Taxation** – If the income has been taxed in the other state, it is an allowable tax credit deduction so long as the deduction does not exceed the tax payable in Tanzania.

Summary

Tanzania has concluded negotiations but not yet ratified DTAs with EAC, Vietnam, Oman, and Botswana. Also, there are negotiations of DTAs at various levels with the UAE, Netherlands, Mauritius, Turkey, China, Morocco, Iran, Kuwait, South Korea, and the United Kingdom. There are no on-going re-negotiations of existing DTAs.

Tanzania Assessment

Tanzania has a moderate number of tax treaties, 9 in total. The majority of the tax treaties (being the ones with Denmark, Norway, Sweden[33], Finland and Italy) stem from the 1970s, while the oldest enforced tax treaty[34], being the one with Zambia, was already concluded in 1968. The other three tax treaties are with Canada (1995), South Africa (2005) and, lastly, India (2011)[35].

Especially the tax treaties that were signed in the 1960s and 1970s are outdated, and are most restrictive with regard to source taxation rights for Tanzania. The Tanzanian government has indicated that it is currently investigating the possibility to renegotiate its existing DTAs. Tanzania's DTAs mainly follow the design of the OECD tax treaty model.

For example, with regard to the permanent establishment (PE) criteria, Service PE and PE for collecting premiums or insuring risk is not accounted for. Also with regard to other important articles, such as the ones on source taxation of capital gains or anti-abuse measures such as the LoB or PPT, have not been included in the tax treaties of Tanzania.

The tax treaties with Denmark, Norway, Sweden, Finland and Italy are not specifically restrictive with regard to the application of the domestic withholding tax rate on passive income payments.

The Tanzanian withholding tax rates based on domestic law, both for residents as non-residents, are already substantially low: 5% WHT on qualified dividends payments or dividends payments related to Dar es Salaam Stock Exchange listed companies; 10% WHT on dividend payments from other corporations; 10% for interest payments and; 15% for royalty payments.

The five DTAs mentioned above do therefore not restrict Tanzania in the leverage of WHT on passive income payments, relative to domestic legislation.

The treaty with Canada, concluded in 1995, is one of the least restrictive DTAs concluded by Tanzania. It uses a permanent establishment definition allowing Tanzania to more easily establish sufficient economic linkage to trigger a permanent establishment designation. Also, the tax treaty includes many UN clauses, inter alia on capital gains taxation. As with the other articles, the DTA with Canada has no general anti-avoidance measure. However, included in the treaty is a specific article that dismisses the use of the tax treaty in specific cases.[36]

The tax treaty between Tanzania and South Africa (from 2005) is a relatively restrictive tax treaty for source countries, especially in comparison with the DTAs concluded with Canada and India. Although the permanent establishment criterion is relatively extended (it includes a Service PE), leverage of WHT rates is limited in some instances for Tanzania. The WHT on royalty payments, for example, is lowered to 10%, and even to 0% in specific cases. Also the WHT on technical services fees is 0%. Furthermore, capital gains taxation is only granted in a limited number of cases. The latest Tanzanian tax treaty agreed with India and signed in 2011 provides most source taxation rights to Tanzania.

33 This treaty was altered in 1987.
34 Tanzania did have tax treaties with and through its colonial power (the United Kingdom): Canada (1956), Denmark (1950/1959), India (1979), Norway (1951/1963), South Africa (1959), Sweden (1949/1958), Switzerland (1963), United Kingdom (1952). These tax treaties have all been terminated and are no longer enforced.
35 Tanzania already had a DTA with India, signed in 1979. This treaty is no longer in effect.
36 "The Agreement shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State".

Generally, the treaty uses particular extended criteria for permanent establishment and includes many articles from the UN tax treaty model such as the possibility for the source state to tax capital gains. On the downside, WHT on passive income payments are restricted based on the Tanzania-India tax treaty. For example, the WHT on royalty payments is lowered to 10% (compared to the 15% domestic WHT rate on royalties in Tanzania) and to 0% for technical services fees.

The tax treaty with Zambia, signed in 1968, is extremely outdated and limits the taxing rights of the source countries in numerous ways. For example, withholding tax rates on dividends, interest, royalties and technical services fees have been lowered to 0%. Furthermore, criteria for providing permanent establishment are also limited. However, as the economic relationship between Zambia and Tanzania is more balanced, this will not necessarily lead to an adverse situation for either Tanzania and Zambia.

With regard to FDI, directed towards Tanzania, the top 12 is made up of China, India, Kenya, United Kingdom, Mauritius, Oman, the United Arab Emirates, Canada, the United States, the Netherlands, South Africa, and Germany.[37] Tanzania has only signed a DTA with three countries from the main investing countries in Tanzania (namely India, Canada and South Africa). It is unclear to which extent Tanzania has benefited from signing the current nine tax treaties.

The absence of bilateral tax treaties has, however, not deterred investors, for example, China, Kenya and the United Kingdom to invest substantially in Tanzania. Nonetheless, the Tanzanian government is looking to broaden its DTA network and is currently negotiating DTAs with a number of other countries. The negotiations with regard to tax treaties with Vietnam, Oman and Botswana and the East African Community have already been concluded, but the treaties have not yet been signed and/or ratified.

Furthermore, Tanzania is also negotiating tax treaties with the Netherlands, Mauritius, Morocco, United Kingdom, United Arab Emirates, South Korea, Singapore, Turkey, Kuwait, Iran and China. At last, proposals to start negotiations have been made with Malawi, Cyprus, Czech Republic, Nigeria, Qatar, Egypt, Zimbabwe, Hong Kong and Bangladesh.

Over the last decade there has been much discussion with regard to the added value of the conclusions of DTAs by capital-importing low-income countries. It has been noted by CSO, academics and international government institutions that concluding DTAs will not necessarilly lead to increased trade and investment. Even more important, it has been shown that many DTAs result in lower revenue rights, especially for the capital importing low-income countries.

This is what a recent IMF working paper says about DTAs:

> **"The investment flows between the two contracting states will to a large extent dictate who will bear the cost of different treaty provisions. As most tax treaty provisions will impose various constraints on source-country taxation, while providing few limitations on resident countries beyond those already contemplated under prevailing domestic legislation, the cost of entering into a tax treaty will generally be greater for net capital importers."[38]**

As with the already low withholding taxes of Tanzania, applicable in the absence of tax treaties, these barriers to international trade and investment are already relative low for Tanzania.

It is unclear whether these potential new DTAs will provide Tanzania with socio-economic benefits. It is therefore important for Tanzania to assess whether potentially concluded DTAs will lead to increased welfare in Tanzania. Signing DTAs for other reasons, for example to stimulate the political relationship between the countries or to provide the current government in power with "pro-investment" reputation, does not stem from a sound cost-benefit analysis. It is clear, however, that whenever Tanzania is aiming for signing new, or renegotiating old, DTAs should provide Tanzania with sufficient source taxation rights and should include strong anti-abuse measures.

37 Santander Trade and Markets https://santandertrade.com/en/portal/establish-overseas/tanzania/investing

38 Leduc S., and Michielse G., Are Tax Treaties Worth It for Developing Economies?, **Corporate Income Taxes Under Pressure: Why Reform Is Needed and How It Could Be Designed**, Mooij R.D, Klemm A., Perry V., (eds.). https://www.elibrary.imf.org/view/books/071/28329-9781513511771-en/ch008.xml

PERMANENT ESTABLISHMENT (P.E.)

DIVIDENDS

The State where the recipient is resident has the taxing rights

CANADA
The host state has up to 25% taxing rights; and 20% when a company owns at least 15%.

DENMARK
The host state has up to 15% taxing rights.

FINLAND
The host State has up to 20% taxing rights.

ITALY
Host State has up to 10% taxing rights.

NORWAY
The host State has 20% to taxing rights.

SOUTH AFRICA
The host state to tax up to 10% of gross amount of dividends where the recipient is resident in the other state and is, the beneficial owner of the company that is paying dividends holding at least 15% of that company paying dividends; and 20% of the gross amount of the dividends in all other cases.

INDIA
The host State has up to 5% taxing rights if the recipient is a company with at least 25% of the shares; and 10% in all other cases.

SWEDEN
The host State has up to 25% taxing rights but only 15% if a company owns at least 15%.

ZAMBIA
Host State has no taxing rights.

MANAGEMENT OR PROFESSIONAL FEES

CANADA
The host state has up to 20% taxing rights.

DENMARK
The host state has up to 20% taxing rights.

FINLAND
The State from where the fees arise has up to20% taxing rights.

INDIA
No provision relating to management and professional fees.

ITALY
Management fees may be taxed in both contracting states.

NORWAY
The host State has up to 20% taxing rights.

SWEDEN
The host State has up to 20% taxing rights.

ZAMBIA
Tanzania retains all taxing rights.

SOUTH AFRICA
Not covered. Tanzania retains all taxing rights.

INTEREST

%

CANADA: Interest taxable in residence state. — WHT Capped at **15%**

DENMARK: Interest taxable in residence state. — WHT Capped at **12.5%**

FINLAND: Interest taxable in residence state. — WHT Capped at **15%**

INDIA: Interest taxable in residence state. — WHT Capped at **10%**

ITALY: Interest taxable in residence state. — WHT Capped at **15%**

NORWAY: Interest taxable in residence state. — WHT Capped at **15%**

SWEDEN: Interest taxable in residence state. — WHT Capped at **15%**

ZAMBIA: Source state has primary taxing rights. — WHT **N/A**

SOUTH AFRICA: Interest taxable in residence state. — WHT Capped at **10%**

Uganda Context

The exponential growth in cross-border trade and investment involving the transfer of goods and services, technology and the movement of workers across countries requires that rules are developed to address the ever-increasing number of international tax issues that arise as a result of such activities.

Tax treaties generally aim to address the issues related to double taxation, as well as other tax barriers which can act as a deterrent to cross-border trade and investment. Countries may also enter into tax treaties with each other to improve coordination and cooperation between tax administrations to address tax avoidance or evasion, the exchange of tax information, and the assistance in the collection of unpaid taxes, among others.

In Uganda, matters regarding taxation and International Agreements/Treaties/Conventions are enshrined in the 1995 Constitution. The mandate to handle the negotiation and conclusion of tax treaties lies with the Ministry of Finance, Planning and Economic development; assisted by the Ministry of Justice and Constitutional Affairs, and the Uganda Revenue Authority (URA).

As a result of the increased integration of the global economy over the last few decades, the risks of Base Erosion and Profit Shifting (BEPS) are exacerbated and more so for developing countries like Uganda. This has made it necessary to revise the International taxation rules in order to protect the tax base of each country.

In this light, Uganda has put in place a tax treaty model and policy that is aimed at addressing the issues with its own tax treaties, emerging challenges in international taxation and aligning to international best practice as per the outcomes of the OECD BEPS Project. It is assumed that subsequent treaties being negotiated or renegotiated (such as Mauritius and Netherlands) would be in line with the treaty model and policy.

Double Taxation Agreements – A Brief Analysis of Uganda's Income Tax Treaties

Uganda currently has nine Income Tax Treaties in force with Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa, United Kingdom and Zambia, most of which were concluded after the 1995 constitution. The treaty with Belgium, China, the UAE and the EAC treaty are currently not yet in force.

The title and preamble to the current tax treaties state that it is for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The distributive rules in the treaties with regard to the taxation of income are provided for in articles 6 to 23 of the treaties Uganda has with its partners, these determine the allocation of taxing rights between the parties to the treaty with respect to the different categories of income (please see the attached schedule).

Photo by Joy Obuya/Oxfam

The key features and issues concerning the items of income as well as permanent establishment (PE) are highlighted below:

1. **Permanent Establishment**
   Permanent establishment is a key term and concept under tax treaties and defines the term to mean a fixed place of business through which the business of an enterprise is wholly or partly carried on. The Uganda Income Tax Act (ITA), 1997 refers to and defines a branch under section 78 as a place where a person carries on business and proceeds to include various activities within the scope of a PE.

   The ITA inclusions of what constitutes a branch are generally much broader than what is provided in the current treaties.

   Whereas the treaties in place generally give a 6-month time threshold for the existence of a PE, the longest time in the ITA is 90 days (3 months), and the ITA has been amended several times over the years to address the emerging PE challenges.

   The PE treaty article, therefore, continues to pose tax challenges because non-resident enterprises of treaty partner states avoid the PE or fixed base status in Uganda by conducting activities shorter than 6 months in the country. The PE time threshold coupled with the ongoing challenges of taxing the digitalized economy compounds the problem.

2. **Business Profits**
   The business profits of a non-resident enterprise operating in Uganda can only be taxed if a PE is determined to exist in Uganda, this brings back the challenges of PE as highlighted in (i) above.

   Even in cases where a PE of the non-resident entity is determined to exist, the attribution of profit to the PE is still a complex process due to limited access to information and a limited capacity by the tax administration staff to attribute profit to the PE.

3. **Dividends**
   The domestic tax rate for dividends (with a few exceptions) is 15% Withholding Tax (WHT) for both residents and non-residents. Recipients of dividend income residents in many of the treaty partner states maintain the rate of 15% with a possible reduction of 5%-10% subject to a capital investment threshold.

   It is noted that UK and Italy allow for a 15% rate with no exceptions, whereas the Netherlands allows a WHT rate of up to 0% subject to a more than 50% capital investment by a Dutch resident in the Uganda resident company paying the dividend.

   Such provisions are what promote treaty shopping by entities to obtain a tax benefit, treaty shopping and other abuses is a key challenge that was addressed by the BEPs action point 6 and the recommendations therein adopted in the revised UN and OECD Model Tax Conventions.

   Hence signatories to the Multilateral Instrument (MLI) would have adopted it but it is also a good recommendation that should be adopted by the non-signatories to the MLI. The tax paid in this regard is a final tax on the non-resident, in accordance with the ITA.

4. **Interest**

Residents of treaty partner states pay a 10% WHT on interest income derived from Uganda with the exception of Italy and UK, other resident taxpayers from non-treaty states pay 15% WHT and the tax paid is final in accordance with the ITA. Resident persons, with some exceptions, pay 15% WHT on interest received and the tax is final.

5. **Technical Fees / Administration & Management Fees and Royalties**

Non-resident persons deriving technical/ management fees or royalty fee income from Uganda pay 15% WHT as a final tax. Residents of treaty partner states pay 10% WHT on such incomes except for the UK treaty where it is 15% for both. The Netherlands treaty does not provide for a technical fee article but allows for a 10% WHT rate on royalties. The WHT paid in this regard is also a final tax.

Resident persons offering similar services would pay 30% of their chargeable income computed, but important to note is that such fees/charges by the non-resident entities comprise imported services and attracts 18% VAT (reverse charge) under the VAT Act.

6. **Capital Gains Tax**

The treaties currently in force allocates exclusive taxing rights to the source state with respect to movable and immovable property, the right to tax the gain on other classes of assets lies with the residence state of the alienators.

However, the key avenue through which capital gains tax has been lost or will be potentially lost has been through the offshore indirect transfer (OITs) of assets and this has emerged as a significant concern among developing countries Uganda inclusive.

Discussions are ongoing on the tax treatment of these transactions among various international organizations such as the OECD, UN, World Bank and IMF. On the domestic front, various amendments have been effected on tax legislation to plug the loopholes in the sourcing rules under Section 79 of the ITA.

7. **Other Income**

For the treaties reviewed, the residence state has the exclusive right to tax any other income of its residents, wherever arising.

8. **Elimination of Double Taxation**

Uganda's DTAs seek to eliminate or reduce double taxation through the credit method, meaning that Uganda will grant credit to its residents for the tax levied on income derived from the source state against the Ugandan tax levied (residence) on such income.

Summary

The distributive rules in the current treaties with respect to passive income (dividends, interest, royalties) and technical fees are largely fair to Uganda as source country and net capital importer.

The main concern that need to be addressed in the treaties with the emerging global trends in taxation is with regard to redefining the permanent establishment and moving away from the "fixed place" and moving to tax where value is created. This is more so with the exponential growth in digitalized business models that do not require physical presence to derive value out of a jurisdiction, once the PE definition and inclusions are broadened, then the other challenges under business profits would be resolved as well.

The international discussions around the taxation of the digitalized economy and the hope that the 135+ members of the OECD Inclusive Framework will reach a consensus on how this economy will be taxed is key for jurisdictions like Uganda that are not members since whatever consensus is arrived at may form International best practice.

The other key challenge under capital gains would require treaty renegotiation to include provisions that cover offshore indirect transfers, this would be a significant plug against tax that would be potentially lost through such arrangements.

Uganda Assessment

Uganda currently has a total of 9 tax treaties in effect. The oldest enforced tax treaty of Uganda is the tax treaty with Zambia, which stems from 1968.[39] The other tax treaties in effect were concluded in the 1990s, with the United Kingdom (1992), South Africa (1997) and Norway (1999); and in the early 2000s, with Italy and Denmark (2000), Mauritius (2003) and the Netherlands and India (2004). Since 2004, no other treaties have come into force for Uganda.

39 Uganda did have tax treaties with Rhodesia and Nyasaland, Sweden, Denmark, Canada and South Africa stemming from pre-colonial times. But these have all been terminated.

The tax treaties negotiated by Uganda are generally restrictive with regard to Permanent Establishment (PE) criteria. For example, the Service PE (the furnishing of services, including consultancy services can in themselves constitute a PE) is only included in 3 of the 9 enforced tax treaties: Italy, Mauritius and the Netherlands. Also, most tax treaties do not allow for the inclusion of other important UN tax treaty model articles with regard to the permanent establishment criteria.

In another example, only the tax treaties with India, Mauritius and India allow for the establishment of PE for a person acting on behalf of an enterprise that habitually maintains a stock of goods or merchandise from which that person regularly delivers good or merchandise on behalf of the enterprise. With regard to the inclusion of insurance brokers for the establishment of PE and if, related to the two former provisions, the person acts, although acting exclusively on behalf of one or more enterprises to which it is closely related, as an independent agent, are only partially accounted for in the tax treaties with South Africa and India.

Also with regard to other articles (such as limited for traction or deduction for payments to head office) the tax treaties with Uganda are restrictive. The tax treaties do also not allow for limited force of traction and only the tax treaties with India, UK and Zambia deny deduction for payments to head offices in the determination of profits. Before discussing the other tax treaties, the tax treaty with Zambia will be discussed. This is by far the oldest, currently enforced, tax treaty by Uganda and largely follows the OECD tax treaty model. In comparison with other tax treaties, this treaty is most restrictive for the source state. For example, rights to levy withholding taxes on qualified dividend, portfolio dividend, interest, royalty and technical services fees payments have not been granted to the source state and rights have been provided fully to the resident state.

Also, almost no articles from the UN tax treaty model have been included in the treaty. Nonetheless, as the tax treaty has been concluded between two economically equal countries, with little bilateral investment, limitation of taxing rights will be relatively equally divided.

Important aspects of the other tax treaties, especially with regard to taxation rights allocated to source countries, are the articles on withholding taxes over passive income payments. Without the intersection of tax treaties, Uganda's withholding tax rates for dividend, interest and royalty and management fee payments is 15%. The majority of the tax treaties in force lower the taxation rights for Uganda with regard to qualified dividend payments to 10%.

There are two exceptions in this case:

- **The first exception are the tax treaties negotiated with Italy and the United Kingdom, which put the taxation right at 15%.**
- **The other exception is the tax treaty with the Netherlands, as no taxation rights are allocated to the source state whenever the company holds directly at least 50% of the capital of the company paying the dividends. In all other cases the taxation right is limited to 5%. This also applies with regard to portfolio dividend payments.**

Again, most tax treaties put the possibility for the source state to tax these payments at 15%. Only the tax treaties with India and Mauritius lower this taxation right to 10%. With regard to interest payments, most tax treaties lower the taxation right to the same WHT of 10%. It is, again, the tax treaties with Italy and the United Kingdom that put the taxation right at 15%, thereby effectively not granting less taxation rights to Uganda as would have been the case without a tax treaty.

The withholding tax on royalty payment is lowered, for all tax treaties to 10% with the only exception being the United Kingdom. However, with regard to royalty payments on the use of equipment, Denmark, Norway, the Netherlands and South Africa provide no taxation right to the source state. Most interestingly, all tax treaties, except for the one with the Netherlands provides taxation rights on technical services fees to the source state.

The UK tax treaty allocates a taxation right of 15% to the source state; the other tax treaties allow for source taxation of 10%. However, as noted in a 2018 IMF review of Uganda's international tax system:[40]

> **"the tax treaties only allow Uganda to impose withholding tax on technical services if they are provided to a person in Uganda for a period or periods of 6 months or more in a 12-month period (or 183 days in a period of 365 days). If that provision does not apply, or if the treaty does not include such a provision, then services generally would be classified as business profits and would not be permitted to be taxed by Uganda if the service provider does not have a permanent establishment in Uganda. As a practical matter, this means that very few services provided from outside of Uganda will be taxed at all, which advantages non-local services over local services."**

Most problematic is the fact that almost no capital gains taxation rights are provided to Uganda. It is only the tax treaty with India that allows for the taxation of capital gains derived from the alienation of shares from immovable property or from the alienation of shares in a company. Through the absence of these provisions, Uganda loses enormous amounts of tax revenue annually. This situation was also noted in the Platform for Tax Collaboration paper on the taxation of offshore indirect transfers.

The example in the paper illustrates the scale of the tax loss. Through the inability to tax the capital gains, in part due to the Uganda tax treaty with the Netherlands, Uganda lost close to 5 percent of total government revenue (being nearly 50 percent of public spending on health).

Other important articles, such as the right to tax of income in respect of professional services or other activities of an independent character by the contracting state for a certain period of time have been granted in all tax treaties, except for the one with the Netherlands.

The opposite is true for the UN tax treaty model article that provides taxing rights over salaries, wages and other similar remuneration derived in an employee's capacity as an official in a top-level managerial position of a company. This is not accounted for in any of the Ugandan DTAs.

Also, source taxation of other income not dealt with elsewhere in the tax treaty is only granted in the tax treaties with Denmark, Norway and South Africa.

Anti-abuse rules, be it a Limitation on Benefits (LoB), a Principal Purpose Test (PPT) or another type of anti-abuse provisions are currently part of both the UN and the OECD tax treaty model. Also, the currently effective MLI entails the inclusion of an anti-abuse rule. None of the Ugandan tax treaties incorporates an anti-abuse rule.

As mentioned, Uganda currently has 9 DTAs in force. It has however signed tax treaties with other countries, such as China (2012), the EAC (2010) and the United Arab Emirates (2015). These treaties have, nonetheless, not yet been enforced. Also, Uganda is currently (re) negotiating tax treaties with Qatar, Egypt, Serbia, Turkey, the Netherlands and Mauritius.

The tax treaties negotiated are especially vulnerable to revenue loss as Uganda will (generally) be the source country in connection with all its current treaty partners.[41] One of the most vulnerable tax treaties is the one signed with the Netherlands. Following this tax treaty, withholding tax rates are reduced substantially, resulting in revenue loss for Uganda. Furthermore, a limited number of UN tax treaty model articles have been included in the tax treaty and it is the only tax treaty in force in an East-African nation that has incorporated a

40 IMF (International Monetary Fund), **Uganda: Selected Issues**, African Department, 12 Jul 2017. https://www.elibrary.imf.org/view/journals/002/2017/207/article-A005-en.xml
41 Except for the treaty with Zambia.


Photo courtesy of Pixabay

mandatory binding arbitration article. It is not surprising that most FDIs, directed towards Uganda, are channeled via the Netherlands.[42]

The weaknesses of the Ugandan tax treaty network have been noted by many NGOs[43], academics and international organizations[44]. Uganda therefore decided in 2014 to temporarily halt all tax treaty negotiations and review of its policy towards such treaties. Consequently, the government of Uganda has recently come up with its own tax treaty model.[45]

The inequitable sharing of taxing rights under double taxation agreements (DTAs) is a huge problem for tax treaties concluded between capital importing and capital exporting countries. While DTAs were initially contracted to assure foreign investors of a predictable and internationally-accepted tax environment, and to facilitate offshore tax administration, evidence on the ground suggests that these are not necessarily associated with increased investment from treaty partners.

Instead, multinational companies from non-treaty partners routinely 'locate' in certain jurisdictions simply to exploit treaty benefits, such as a lower withholding rate, consequently undermining the local income tax base. Recently, there has been a global shift towards a more balanced approach to DTAs that would protect the interests of capital-importing, developing countries and eliminate abuse through tax planning and treating shopping.

The extent of Uganda's exposure can be illustrated by recent FDI figures: FDI stocks from the Netherlands were almost three times larger than any other country in 2016, while the United Kingdom and South Africa also rank in the top ten FDI source countries; as are Bermuda and the Seychelles, well-known tax havens (Bank of Uganda, 2018).[46]

Uganda would need to renegotiate all existing DTAs in order to bring them in line with the Ugandan DTA policy. This is particularly relevant for the treaties with the Netherlands and Mauritius, both of which have had a high (and thus detrimental) impact on the tax revenue collection of Uganda. Rather than DTAs, the government should focus on promoting Tax Information Exchange Agreements and mutual assistance procedures, consistent with the best global practice, to strengthen the compliance efforts by the Uganda tax revenue authority.

This will require additional resources in terms of systems and manpower to manage the exchange of information, and the use of this information, particularly for audit and investigations.

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42 Op.cit., **Uganda: Selected Issues**.
43 Hearson M., and Kangave, J., **A review of Uganda's tax treaties and recommendations for action**, Working Paper 50., Institute of Development Studies (IDS), International Centre for Tax and Development (ICTD), http://eprints.lse.ac.uk/id/eprint/67868, Oxfam money pipeline, See also Daily Monitor, **How Uganda is surrendering trillions in tax agreements to multinational firms**, 12 August, 2019 — updated on 03 January 2021. https://www.monitor.co.ug/uganda/business/prosper/how-uganda-is-surrendering-trillions-in-tax-agreements-to-multinational-firms--1842582
44 Op.cit., **Uganda: Selected Issues**.
45 Ibid.
46 UBOS (Uganda Bureau of Statistics), BOU (Bank of Uganda), and UIA (Uganda Investment Authority), **Private Sector Investment Survey 2018 Report**, April 2019. https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/statistics/Surveys/PrivateSectorCapital/PSIS/2018/Private-Sector-Investment-Survey-2018-REPORT.pdf

PERMANENT ESTABLISHMENT (P.E.)

DIVIDENDS

Shared taxation between source and resident state with a limited right (%) to tax income by source state. *

DENMARK
The host state has up to 10% taxing rights of the gross amount of the dividends paid.

INDIA
The host state has up to 10% taxing rights of the gross amount of the dividends paid.

ITALY
The host state has up to 15% taxing rights of the gross amount of the dividends paid.

MAURITIUS
Host State has up to 10% taxing rights.

NETHERLANDS
The host State has up to 15% taxing rights; No tax if BO holds 50% and above; up to 5% if recipient holds less than 50%.

NORWAY
The host State has up to 10% taxing rights if company holds 25% and above; up to 15% in all other cases.

SOUTH AFRICA
The host State has up to 10% taxing rights if company holds 25% and above; up to 15% in all other cases.

UNITED KINGDOM
The host State has up to 15% taxing rights of the gross amount of the dividends paid.

ZAMBIA
Resident state has taxing right, source state taxation exempted.

* ZAMBIA: Resident state has taxing right, source state taxation exempted.

MANAGEMENT OR PROFESSIONAL FEES

DENMARK	INDIA	ITALY
10%: Maximum tax for administration & management fees	Provided under article 12 with royalties as indicated.	**10%**: Maximum tax for administration & management fees

MAURITIUS	NETHERLANDS	NORWAY
10%: Maximum tax for administration & management fees	Not covered.	**10%**: Maximum tax for administration & management fees
SOUTH AFRICA	**UNITED KINGDOM**	**ZAMBIA**
10%: Maximum tax for administration & management fees	**15%**: Maximum tax for administration & management fees	Not covered.

INTEREST

%

Country	Interest
DENMARK: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a Danish resident at 10% of gross amount of interest.
INDIA: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to an Indian resident at 10% of gross amount of interest.
ITALY: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to an Italian resident at 15% of gross amount of interest.
MAURITIUS: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a Mauritian resident at 10% of gross amount of interest.
NETHERLANDS: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a Dutch resident at 10% of gross amount of interest.
NORWAY: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a Norwegian resident at 10% of gross amount of interest.
SOUTH AFRICA: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a South African resident at 10% of gross amount of interest.
UNITED KINGDOM: Shared taxation between source State and residence State	Interest paid by a Ugandan resident to a UK resident at 15% of gross amount of interest.
ZAMBIA:	Source state taxation exempted unless interest is not subject to tax in residence state.

Case Study Uganda

Revenue Questions following the Uganda-Netherlands DTA

In 2006, Uganda discovered about 1.4 billion recoverable barrels of oil at Lake Albert making it the fourth largest source for oil in sub-Saharan Africa. To become a fully-fledged oil producer initiated a 1,445 km pipeline to be constructed through Tanzania.

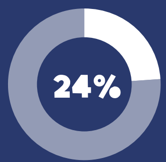
Multinational companies

Over the last **6 YEARS**

Uganda has lost USD:

3 billion

equivalent to about one quarter of the national budget for FY2020/21



in tax incentives and exemptions to multinational companies

Source: Uganda Revenue Authority

2020 was a turning point for Uganda as the Final Investment Decision for the pipeline project led by France's TOTAL and the Chinese CNOOC were on the verge of realization. TOTAL CEO, Patrick Pouyanné, stated that the EAC pipeline project was part of their strategy of developing 'cheap' projects. This is within the context of plummeting oil prices occasioned by the Corona Virus pandemic and the energy markets embracing the reality of climate change and its effects on the sector and the broader society.

For the government of Uganda to derive adequate revenues from this project, there should be no room for error and all fiscal levers would need to be activated. What does 'cheap' mean for TOTAL in this context?

The country has already lost – according to its revenue authority – more than USD 3 billion in tax incentives and exemptions to multinational companies in a period of 6 years and has failed to materialize its promises to dedicate at least 15% of its budget to the health sector. USD 3 Billion dollars is the equivalent to about UGX 11.205 trillion, about 24% of the Uganda national budget for FY2020/21, a sum that can very well run the entire health sector.

Uganda is also affected by specific issues pertaining to its current 9 Double Tax Agreements (DTAs), which do not comply with international best standards according to the International Monetary Fund (IMF). Of concern is its agreement with the Netherlands – a European Union member State considered a tax haven even by members of the EU.

According to the Dutch Office of Statistics, more than 14,000 letter box companies are used to channel out investments using the Netherlands solely as a conduit jurisdiction. 95% of the Dutch investments in Uganda – the country's top investor partner – would have originated from a third country. The DTA between Uganda and the Netherlands is clearly very attractive; one of its perks being that dividends paid from Uganda to an investor owning more than 50% of the shares is not taxed – against a 15% statutory domestic rate.

Against the common belief that a country needs to concede on many advantages in their treaties to attract investments, researchers at the London School of


Photo by Joy Obuya/Oxfam

Economics (LSE) who have studied the DTA between Uganda and the Netherlands, found that "When private sector tax advisers were asked what would happen if the Dutch treaty was cancelled, they stated that investors would simply restructure, and were unlikely to withdraw their investments."

After all, oil is not found everywhere and unlike investment vehicles it cannot be delocalized. The two project partners – TOTAL and Chinese National Offshore Oil Corporation (CNOOC) – have however structured their investment in the four blocks, in which they respectively own 66.67% and 33.33% of the shares, composing the Tilenga upstream portion of the Lake Albert project, through Dutch subsidiaries.

For TOTAL, this is part of a wider network of Dutch entities – 25% (or 56) of its exploration and production subsidiaries that are incorporated in the Netherlands.

Using a standard discounted cash flow model, to estimate future revenues for the project's partners for block EA1, gives an estimate of taxes avoided by TOTAL and CNOOC because of the favourable dispositions of the Uganda-Netherlands DTA.

Overall, Oxfam estimates that Uganda will miss out on USD 287 million over the 25 years of exploitation of the project – for one Exploration Area (or block) alone out of the four comprised in the project.

This amount – which represents only a likely very small portion of all tax leakages for the 4 Exploration Areas – would already be close to 5.7% of the overall potential government revenues stemming from the project and represents a very partial estimate of the potentially missed revenues due to the Dutch-Uganda DTA, based on one block only.

This figure should be taken with caution since oil prices are highly volatile and are based on a 50 USD/Brent barrel price scenario. As the DTA is currently being renegotiated and as the Dutch government has promised to upgrade dividend taxation rates in its DTAs with developing countries, the recommendation is to increase the rate to a minimum of 10%, which would allow the government to collect an additional revenue of at least USD 174 million.

SECTION 3

Tax Glossary

Tax Glossary: A-Z in Tax

(Courtesy - Tax Justice Advocacy: A Toolkit for Civil Society and other relevant sources)

A

- **Automatic tax information exchange** – A system of tax information exchange whereby jurisdictions automatically share information on a taxpayer's assets with the home jurisdiction of that taxpayer. Many CSOs want to see a multilateral agreement for tax havens to share information automatically with all other jurisdictions.

B

- **Beneficial ownership** – This is the natural person or persons who ultimately own or control a legal entity such as company or legal arrangement such as a trust.[47]

C

- **Capital gains taxes** – A tax on the profits from the sale of capital assets such as stocks and shares, land and buildings, businesses, and valuable assets such as works of art.
- **Consumption taxes** – Most countries apply consumption taxes such as value added tax, general sales taxes, and excise taxes.
- **Corporate taxes** – Taxes on the profits made by limited liability companies and other similar entities. The tax is generally imposed on net taxable income, specified in the company's financial statement.
- **Country-by-country reporting** – A proposed accounting standard under which a multinational corporation would be required to report in its annual accounts' key financial information in each country and territory in which it operates.

D

- **Deferred tax** – Deferred tax assets are tax credits, for example related to current losses, from which the company can set off future tax liabilities.
- **Direct taxes** - Taxes that are charged on physical or legal persons directly upon their salary, profits, dividends, rents, or other types of income.
- **Dividends** - income from shares, or other rights, not being debt-claims that allow for the participation in profits.
- **Double taxation** – Double taxation is a tax principle referring to income taxes paid twice on the same source of income. It can occur when income is taxed at both the corporate level and personal level. Double taxation also occurs in international trade or investment when the same income is taxed in two different countries. This is a situation in which more than one state has a claim to levy taxes over cross border income.

E

- **Economic double taxation** – The imposition of taxes on the same item of income but whereby two different persons are taxable to this same economic transaction. This situation arises in the case of corporate taxation, where the same economic transaction leads to both profits and dividends which are taxable upon different taxpayers.
- **Equitable taxation** – Equitable taxation refers to tax policies that reduce income, wealth or other social inequalities. Horizontal equity refers to persons and businesses in similar circumstances in terms of their welfare who should be treated similarly, while vertical equity refers to the idea that people with a greater ability to pay taxes should pay more.
- **Excise taxes** – These are taxes usually imposed on a limited range of goods, such as luxury goods, or on products that can harm the consumer.
- **Export processing zone (EPZ)** – An artificial ring-fenced territory within a state, in which export-orientated industries with little interaction to domestic markets operate while the usual laws and regulation are suspended or relaxed.

47 FATF – Egmont Group (2018), **Concealment of Beneficial Ownership.**

F

- **False invoicing** – A similar practice to transfer-pricing abuse, but between unrelated companies.
- **Flat tax** – A tax system in which, as income increases above an agreed tax-free sum, the amount of tax paid remains constant in proportion to total income.

G

- **General sales tax (GST)** – A tax added to the value of all sales with no allowance for claiming a rebate on tax paid. Different from the value added tax, which is only paid by the final consumer, as each other stage of production needs a documented proof of not being a final consumer.
- **Goods and services tax (GST)** – Same as general sales tax – name differs from country to country.

H

- **High net worth individual** – Otherwise known as HNWIs ('hen-wees') in the wealth management sector. Generally, categorised as individuals with more than USD 1 million in liquid financial assets available for investment, which excludes their primary residence and motor vehicle.

I

- **Illicit capital flight** – The process whereby wealth-holders and businesses place their funds and other assets outside the country of residence. The process is illicit if funds are of criminal origin, are illegally transferred, or used for illicit purposes.
- **Income taxes** – Taxes on income, profits, inheritance, payroll, and capital gains are generally divided between taxes payable by individuals and corporations.
- Indirect taxes – A form of tax charged upon transactions, usually on their gross value. Examples include sales taxes, value added taxes, goods and services taxes, stamp duties, land taxes, excise and customs duties, and levies of all sorts.
- **Interest** – Income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

J

- **Juridical double taxation** – This is a situation whereby the same income being held by the same person is taxable in more than one state.[48] This arises when: (a) When a person is being taxed on their worldwide income by more than one state; (b) Where a person being resident in one state gains income in another state, and that income is taxable in both states; (c) Where a person even though they are not a resident of either state, derives income through a fixed place of business in one state but manages this fixed place of business through an entity based in the other state and both states consider the income as being derived from their own states.

M

- **Management fees** – Payments made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services.
- **Money laundering** – The practice of processing money from criminal or otherwise illicit activities to give it the appearance of originating from a legitimate source.

P

- **Progressive taxes** – A tax system in which, as income rises, the amount of tax paid increases in proportion to the income as well as in absolute amount, that is the percentage tax rate increases as the income rises.

R

- **Regressive taxes** – Regressive taxes are the opposite of 'progressive taxes.
- **Resident country/resident state** – These are capital exporting states, that move capital in order to invest in an economic activity in another

48 OECD (2017) Commentaries on the Articles of the Model Tax Convention, Commentary on Article 23A and 23B.

state. The resident state is also determined through the place of incorporation of the company that is exporting capital or through the effective place of management and control of that body corporate.
- **Royalties** – Royalties are usage-based payments for ongoing use of an asset as prescribed in a licence agreement, for example natural resources such as oil, minerals, fisheries, and forests but also intellectual property including music and pharmaceutical products. Royalties are typically agreed upon as a percentage of revenues raised from the use or gradual depletion of an asset.

S

- **Secrecy jurisdiction** – Secrecy jurisdictions are countries and territories that provide financial secrecy which undermines the regulation of another jurisdiction for the primary benefit and use of those not resident in their geographical domain.
- **Shell companies** – These are companies which are legitimately incorporated. However, they have no significant assets, employees, or any operations. They are often used to hide the natural persons who are the ultimate owners of the company, so that they can hide their ownership of illicit money or sponsorship of illicit activity.
- **Social security payments** – Payments made towards maintaining government provided health, unemployment, pensions, and other basic social rights. Frequently considered as taxes.
- **Source country/source state/situs** – This is the host country of investment or the destination of the investment. They are often referred to as capital importing states as well.
- **Special economic zone (SEZ)** – Similar to the EPZ, but the activities can include domestic market-orientated business activities.

T

- **Tax** – A fee levied by a government or a regional entity on a transaction, product or activity to finance government expenditure. Tax rates and the tax base are decided by a representative legislative body, based on constitutional provisions.
- **Tax arbitrage** – The process by which a sophisticated taxpayer plays off the tax systems of two or more different countries to obtain a tax benefit as a result.
- **Tax avoidance** – The term given to the practice of seeking to minimise a tax bill within the letter of the law (as opposed to illegal methods which would be classed as tax evasion or fraud). This often involves manipulating the tax base to minimise the tax payable.
- **Tax base** – The collective value of transactions, assets, items and other activities that a jurisdiction chooses to tax.
- **Tax burden** – The total amount of tax paid by an individual, organisation or population. Also referred to as tax incidence.
- **Tax capacity** – A term that denotes the capacity of a sovereign country to raise revenue regarding its fiscal architecture.
- **Tax competition** – The pressure on governments to reduce taxes, usually to attract investment, either by way of reduction in declared tax rates or through the granting of special allowances and incentives.
- **Tax compliance** – Payment of tax due without engaging in tax avoidance or evasion.
- **Tax consensus** – A set of tax policies promoted by the International Monetary Fund in view of macroeconomic stability, but disregarding equity concerns. Policies include in particular: reductions in the rates of corporate and other income taxes; reduction of trade taxes in support of trade and investment liberalisation; expansion of indirect taxation such as value added tax; simplification of the tax code; and promoting significant structural overhaul of tax administrations.
- **Tax dodging** – A legally imprecise term that is often used by tax justice campaigners when it is not clear whether tax is being avoided or evaded. It highlights the fact that many tax avoidance strategies are abusive, while being considered legal.
- **Tax effort** – A term used to determine the extent to which a government translates tax capacity into revenue.
- **Tax evasion** – A term used to denote illegal methods used to pay less tax. Also known as tax fraud.
- **Tax expenditure** – Used to describe the cost of tax incentives of all types in terms of lost potential tax revenue. As with any other expenditure, it should be considered as an investment and evaluated based on the cost and benefit.
- **Tax gap** – The difference between nominal tax

ratios and actual tax revenues. This can be calculated by using various methodologies, for instance the difference between tax capacity and tax effort, or random tax inspections of taxpayers.

- **Tax haven** – See 'secrecy jurisdiction'.
- **Tax holiday** – A period during which a company investing in a country does not have to pay tax under an agreement with the government.
- **Tax incentives** – A tax incentive is an aspect of the tax code designed to encourage a certain type of behaviour. This may be accomplished through means such as limited periods of tax holidays or permanent tax deductions on certain items.
- **Tax planning** – When tax legislation allows more than one possible treatment of a proposed transaction, the term may legitimately be used for comparing various means of complying with taxation law.
- **Thin capitalisation** – A company is thinly capitalised when its capital is made up more of debt than equity. For tax purposes, a problem arises when a company claims tax deductions on inflated debt interest payments. Subsidiaries of a company based in a tax haven can overcharge interest payments to other related subsidiaries, and thus shift profits to low-tax jurisdictions. In most countries, the practice is regulated or outright illegal but difficult to detect.
- **Trade mispricing** – The term used to cover both transfer mispricing and false invoicing.
- **Transfer pricing** – A transfer-pricing arrangement occurs when two or more businesses that are owned or controlled directly or indirectly by the same group trade with each other. If a transfer price can be shown to be the same as the market price (the arm's length price) then it is acceptable for tax purposes.
- **Transfer-pricing abuse** – This involves the manipulation of prices of transactions between subsidiaries of multinationals, or, more specifically, the sale of goods and services by affiliated companies within a multinational corporation to each other at artificially high or low prices (outside the arm's length range). This may occur for several reasons, including to shift profits to low-tax jurisdictions or countries providing preferred tax treatment to certain types of income. (Can also be referred to as 'transfer mispricing'.)

V

- **Value added tax (VAT)** – A tax charged by businesses on sales and services but which allows businesses to claim credit from the government for any tax they are charged by other businesses in the production chain. Different from the general services tax, which does not require proof of being an intermediate producer. VAT is often criticised for being regressive.

W

- **Withholding tax** – Tax deducted from a payment made to a person outside the country. Generally applied to investment income, such as interest, dividends, royalties, and licence fees according to a Double Tax Treaty (DTT) signed between the two jurisdictions.

SECTION 4

Tabulation of DTAs

Tabulation of Double Taxation Agreements in Burundi

Tax provisions in Burundian DTAs

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
EAC **Signed 30 November 2010** **Not in force**	Permanent Establishment (PE) • A period of 6 months and more, (+ having operating activities, installation/ projects, place of management, branch, office, factory, workshop, storage). • PE can be evidenced by services furnished on Burundian territory for a period or periods aggregating more than six months within any 12-month period (183 days) (art.5).	The state where the recipient is resident has the taxing rights. The host state also has taxing rights, for e.g. Burundi: Non-residents: (15%) Resident to another resident: 30% Non-residents: 15%. A lower withholding rate of 5% on the gross amount of dividends applies where the recipient is the beneficial owner of the dividends. There is no minimum holding period for shares to access treaty benefits.	• The state in which the business company is situated (residence) has the taxing rights. • The host state has also taxing rights. Tax charged on interests for non-residents: 15% Tax charged on interests for residents: 30%. Exception: Interests are exempted when it is derived or when the effective owner is the government, a political subdivision, a local authority or institution/body/ board entirely owned by the government. A lower withholding rate of 10% on the gross amount of interest applies where the recipient is the beneficial owner of the interest.	Taxing rights are given to the state where the recipients reside • Tax charged on royalties for non-residents: 15% • Residents: 30% as normal income. A lower withholding rate of 10% on the gross amount of royalties applies where the recipient is the beneficial owner of the royalties.	• Management fees are taxable in the residence state • They may however also be taxed in the state in which they arise. • Withholding tax charged for non-residents is: 30% (Burundi) while tax charged for residents is 15%. A lower withholding rate of 10% on the gross amount of management and professional fees applies where the recipient is the beneficial owner of the management and professional fees.	• Gains from the alienation of immoveable property is taxable in the state in which such property is located: » Non-residents: 15%; » Residents: 30%. There is no provision that touches on the alienation shares in property-rich companies. Likewise, there is no provision that touches on the alienation of other shares.	All other income is taxed and retained where the residence state of the taxpayer. The host state may also tax other income.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
TURKEY **Initialed 9 December 2016** **Not in force**	A continuous period of more than 9 months and more, evidenced by a building site, a construction site, or installation project.	• Taxing rights are given to the state of destination of income or where the recipient is resident. • The other state has taxing rights limited to dividends in all other cases.	The State where the recipient (beneficial owner) resides has taxing rights. The state where the interests arise has taxing rights according to national tax law, without exceeding 10% of the gross amount of interests. Interests paid to government entities in both states or central banks are exempted (0%).	The State where the recipient (beneficial owner) resides has taxing rights. The state where the interests arises has taxing rights according to national tax law, without exceeding 10% of the gross amount of royalties.	The State where the recipient resides has taxing rights. The other state also has taxing rights when services rendered are attributable to a fixed base.	Hosting state and the other state have taxing rights (taxable in the State where the immovable or movable property and other gains are situated or generated). The state (where the alienated property is situated) has **exclusive** taxing rights.	The state where the recipient has residence has taxing rights, including income gained on a period of less than 183 days, remuneration paid to non-residents or not attached to a PE or a fixed regular base. The other state also has taxing rights remuneration derives from activities which are exercised in that state.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
EGYPT	• Period of 6 months and more, (+ having operating activities, installations / Projects, place of management, branch, office, factory, workshop, storage). • PE can be evidenced by services furnished in Burundian territory for a period or periods aggregating to more than six months within any 12-month period (183 days).	The state where the recipient is resident has the taxing rights. Taxation according to the criteria of PE (individuals and corporates). Egypt: 10% on dividends paid to non-residents. Burundi: (15%) for non-residents and 30% to residents.	The state where the recipient is resident has the taxing rights. • Non-residents (Egypt): Application of Tax agreement or tax payment for 20% on interests derived on loans (less than 3years) • Burundi: 30% Note: • The reduced rate of WHT applied according to a DTT should not be automatically applied. The rate (20% of Egyptian tax) should be imposed upon deduction. • Considering certain conditions, the foreign recipient of payments can get a refund for the amount resulting from the variance between the normal rate of 20% and the reduced treaty rate.	The state where the recipient is resident has the taxing rights. Egypt: 20%. Burundi: • Tax charged on royalties for non-residents: 15%. • Residents: 30% as normal income. Note: • The reduced rate of WHT applied according to a DTT should not be automatically applied. The rate (20% of Egyptian tax) should be imposed upon deduction. • Considering certain conditions, the foreign recipient of payments can get a refund for the amount resulting from the variance between the normal rate of 20% and the reduced treaty rate.	Egypt: When paid by corporates, tax deducted up to 13% of either the loan amount or the company's issued capital. Burundi: Residents: 30% Taxing rights are given to the state where the recipient has residence Non-residents: 15%.	The state where the recipient is resident has the taxing rights. Egypt: 20%. Burundi: • Non-residents: 15%; • Residents: 30%.	All other income is taxed and retained where the taxpayer has residence. The Host also has taxing rights where the permanent establishment is present.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
UNITED ARAB EMIRATES (UAE **Ratified 10 April 2018)** **Not in force**	Construction PE exists where the project lasts for more than six months. There is no services PE.	The residence state of the recipient of dividends has sole taxing rights where the recipient beneficially owns the dividends.	The residence state of the recipient of interest has sole taxing rights where the recipient beneficially owns the interest.	The residence state of the recipient of royalties has sole taxing rights where the recipient beneficially owns the royalties.	There is no provision on the taxation of management and professional fees.	State where the property is located, has taxing rights. Gains from the alienation of shares in property-rich companies may be taxed in the state in which the immoveable property in located. Property rich companies are those that derive more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State. There is no provision on the alienation of other shares.	Other income is only taxed according to the residence state.

Tabulation of Double Taxation Agreements in Kenya

Tax Provisions in Kenyan DTAs

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
CANADA **Signed: 27 April 1983** **In Force: 8 January 1987**	PE exists where construction site exists for 6 months. PE includes the provision of supervisory activities for more than 6 months.	The state in which the recipient is resident has taxing rights. Where the recipient is the beneficial owner of the shares, the host state may tax. The WHT in such instances is capped at 15 percent of the gross amount of the dividends if the recipient is a company which owns at least 10 percent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends: And 25 per cent of the gross amount of the dividends in all other cases.	State in which the recipient is resident has taxing rights. The host state may however also tax but the WHT rate must not exceed 15% of the gross amount of income. There is no reference to the beneficial ownership of interest income.	State in which recipient is resident has taxing rights. The host state has up to 15% taxing rights There is no reference to beneficial ownership of the royalty income.	State in which recipient is resident has taxing rights. The host state may however also tax but the WHT rate must not exceed 15% of the gross amount of income.	The host state has taxing rights for gains from immovable property. Gains from the alienation of shares in property-rich companies are taxable in the state where the property is located. There is no threshold for determining what a property-rich company is. All other gains are to be taxable in the state of residence of the taxpayer.	Any other income is taxed where the taxpayer resides. The host state also has taxing rights.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
DENMARK Signed: 13 December 1972 **In Force: 15 March 1973**	PE exists where construction site exists for 6 months. PE includes the provision of supervisory activities for more than 6 months.	State in which the recipient is resident has taxing rights. The host state also has taxing rights. WHT rates are capped at 20% where the recipient is a company which owns at least 25 percent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends. In all other cases the WHT rate is 30%.	Taxing rights are given to the state in which the recipient resides. The host state has up to 20% taxing rights.	Taxing rights are given to the state in which the recipient resides. The host state has up to 20% taxing rights.	The state where the recipient resides has taxing rights. The host state has up to 20% taxing rights.	The host state has taxing rights for gains from both movable and immovable property. There are no specific provisions relating to alienation of shares.	The treaty is silent on the taxation of other income.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
EAC Signed 30 November 2010 **Not in force**	Permanent Establishment (PE): • Period of 6 months and more, (+ having operating activities, installations / Projects, place of management, branch, office, factory, workshop, storage). • PE can be evidenced by services furnished on Burundian territory for a period or periods aggregating more than six months within any 12-month period (183 days) (art.5).	The state where the recipient is resident has the taxing rights. The host state also has taxing rights. A lower withholding rate of 5% on the gross amount of dividends applies where the recipient is the beneficial owner of the dividends. There is no minimum holding period for shares to access treaty benefits.	• The state in which the business company is situated (residence) has the taxing rights. • The host state has also taxing rights. Exception: Interest is exempt when it is derived or when the effective owner is the government, a political subdivision, a local authority or institution/body/ board entirely owned by the government. A lower withholding rate of 10% on the gross amount of interest applies	Taxing rights are given to the state where the recipients reside. A lower withholding rate of 10% on the gross amount of royalties applies where the recipient is the beneficial owner of the royalties.	• Management fees are taxable in the residence state. • They may however also be taxed in the state in which they arise. A lower withholding rate of 10% on the gross amount of management and professional fees applies where the recipient is the beneficial owner.	• Gains from the alienation of immoveable property is taxable in the state in which such property is located. There is no provision that touches on the alienation shares in property-rich companies. Likewise, there is no provision that touches on the alienation of other shares.	All other income is taxed in the residence state of the taxpayer. The host state may also tax other income.
FRANCE **Signed: 4 December 2007** **In Force: 1 November 2010**	Building sites consist of PEs where they last for more than 6 months. No services PE.	Taxing rights are given to the State where the recipient resides. The host State has taxing rights. Where the beneficial owner of the dividends is a resident of the residence state WHT is capped at 10%.	Taxing rights are given to the State where the recipient resides. The host state has taxing rights. Where the beneficial owner of the interest is a resident of the residence state, WHT is capped at 12%.	Taxing rights are given to the State in which the recipient resides. Where the beneficial owner of the royalty is a resident of the residence state, WHT is capped at 10%.	There is no article that deals with management and professional fees.	The host State has taxing rights for gains from immovable property.	All other income is taxed in the residence state of the taxpayer. The host state may also tax other income.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
GERMANY **Signed: 17 May 1977** **In Force: 17 July 1980**	A PE exists where a building site exists for more than 6 months. No service PE.	Taxing rights are given to the state where the recipient resides. The host state also has taxing rights capped at 15% of the gross amount of dividends. There are no participation thresholds nor prescribed holding periods. Where Kenya is the home state and the Kenyan company holds 25% of the shares in a German company, German tax shall not exceed 25 percent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 15 percentage points or more.	Taxing rights are given to the State where the recipient resides. The host state also has taxing rights capped at 15% of the gross amount of interest received. No reference to beneficial ownership.	Taxing rights are given to the state where the recipient resides. The host state also has taxing rights capped at 15% of the gross amount of royalties received. No reference to beneficial ownership.	Taxing rights are given to the state where the recipient resides. The host state also has taxing rights capped at 15% of the gross amount of management fees received. No reference to beneficial ownership.	Gains from the alienation of immovable property taxed in the Contracting state in which such property is situated. Gains from the alienation of shares taxable in the residence state.	Other income taxable in the residence state.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
INDIA **Signed: 11 July 2016** **In Force: 30 August 2017**	Covered. Period - 6 months for construction/ installation project and 90 days within any 12-month period for services.	Taxing rights are given to the State where the recipient resides. The host state also has a right to tax. Where the beneficial owner of the dividends Is resident in the home state, the WHT is capped at 10%.	Taxing rights are given to the state where the recipient resides. The host state also has a right to tax. Where the beneficial owner of the interest is resident in the home state, the WHT is capped at 10%.	Taxing rights are given to the state where the recipient resides. The host State also has a right to tax. Where the beneficial owner of the royalties is resident in the home state, the WHT is capped at 10%.	Taxing rights are given to the state where the recipient resides. The host state also has a right to tax. Where the beneficial owner of the management and professional fees is resident in the home state, the WHT is capped at 10%.	The host state has taxing rights for gains arising from the sale of immovable property. Gains from the alienation of shares in property-rich countries are taxable in the state in which the property is. Gains from the alienation of other shares taxable in the residence state.	All other income is taxed where the person resides. The host state has taxing rights.
IRAN **Signed: 29 May 2012** **In Force: 13 July 2017**	Covered. Period - 12 months for construction project and 183 days for services.	Taxing rights are given to the state where the recipient resides. The host State has up to 5% taxing rights.		Taxing rights are given to the State in which the recipient resides. The host state has up to 10% taxing rights.		The host state has taxing rights for both movable and immovable property.	All other income is taxed where the person resides. Host state has some taxing rights where PE is present.
KOREA **Signed: 8 July 2014** **In Force: 3 April 2017**	Building site PE if present for over 12 months. No services PE.	Taxing rights are given to the State where the recipient resides. The host State however may also tax. If the recipient is the beneficial owner of the dividends WHT rates are capped at 8 percent of the gross amount of the dividends if the recipient holds directly at least 25 percent of the capital of the company paying the dividends and 10 per cent in all other cases.	Taxing rights are given to the state where the recipient resides. The host state however may also tax. If the recipient is the beneficial owner of the interest WHT rates are capped at 12 percent of the gross amount of the interest.	Taxing rights are given to the state where the recipient resides. The host state however, may also tax. If the recipient is the beneficial owner of the royalties WHT rates are capped at 10 percent of the gross amount of the royalties.	No provision relating to taxation of management and professional fees.	The host state has taxing rights for immovable property. Gains derived from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the host state may be taxed therein. All other property to be taxed in the residence state.	All other income is taxed where the person resides.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
NORWAY **Signed: 13 December 1972** **In Force: 10 September 1973**	Building and construction site PE after 6 months. Supervisory activities in connection with a building site create a PE after 6 months. No services PE.	Taxing rights are given to the state where the recipient resides. The host state however may also tax. If the recipient is the beneficial owner of the dividends WHT rates are capped at 15 percent of the gross amount of the dividends if the recipient holds directly at least 25 percent of the capital of the company paying the dividends and 25 per cent in all other cases.	Taxing rights are given to the state where the recipient resides. The host state however may also tax an amount not exceeding 20%.	Taxing rights are given to the state where the recipient resides. The host state however may also tax an amount not exceeding 20%.	Taxing rights are given to the state where the recipient resides. The host state however may also tax an amount not exceeding 20%.	The host state has taxing rights for gains from the sale of immovable property located therein. All other gains taxable in the state of residence.	Other incomes are only taxed in the residence state.
QATAR **Signed: 23 April 2014** **In Force: 25 June 2015**	Building site and services PE where time spent is 6 months within a 12 month period.	Taxing rights are given to the state where the recipient resides. The host state, however, may also tax. If the recipient is the beneficial owner of the dividends WHT rates are capped at 5 percent of the gross amount of the dividends if the recipient holds directly at least 10 percent of the capital of the company paying the dividends and 10 per cent in all other cases.	Taxing rights are given to the state where the recipient resides. The host state however, may also tax. If the recipient is the beneficial owner of the interest WHT rates are capped at 10 percent of the gross amount of the interest.	Taxing rights are given to the state in which the recipient is a resident. The host state has up to 15% taxing rights.	No provision relating to management and professional fees.	The host state has taxing rights for gains from the sale of immovable property located therein. All other gains taxable in the state of residence.	Any other income is taxed in the resident's state.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
SEYCHELLES **Signed: 17 March 2014** **In Force: 9 April 2015**	Building site for more than 12 months and services PE where time spent is 6 months within a 12-month period.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 5%.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	Taxing rights are given to the state where the recipient is a resident. The host state also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	The host state has taxing rights for gains from the sale of immovable property located therein. Gains from the sale of shares of property-rich companies taxable in the host state. All other gains taxable in the state of residence.	Any other income is taxed in the resident's state. The host state also has taxing rights.
SOUTH AFRICA **Signed: 26 November 2010** **In Force: 19 June 2015**	Building site for longer than 6 months creates a PE. Services provided for periods exceeding in the aggregate 183 days in any twelve-month period creates a PE.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	Taxing rights are given to the state where the recipient is a resident. The host also has the right to tax however where the recipient is a beneficial owner that is resident in the state of residence the WHT rate is capped at 10%.	No provision on management and professional fees.	The host state has taxing rights for gains from the sale of immovable property located therein. Gains from the sale of shares of property-rich companies i.e. those deriving more than 50% of their value from immoveable property are taxable in the host state. All other gains taxable in the state of residence.	Any other income is taxed in the resident's state. The host state also has taxing rights.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
SWEDEN **Signed: 28 June 1973** **In Force: 28 December 1973**	Building site PE if present for over 6 months. Supervisory services create PE if done for over 6 months.	Home state has right to tax. Host state may also tax but WHT rate capped at 15% of the gross amount of the dividends if the recipient is a company which owns at least 25% of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends; In all other cases the rate is 25% of the gross amount of the dividends.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax with a WHT rate is capped at 15%.	Taxing rights are given to the State where the recipient is a resident. The host also has the right to tax with a WHT rate is capped at 20%.	Taxing rights are given to the state where the recipient is a resident. The host also has the right to tax with a WHT rate is capped at 20%.	The host state has taxing rights for gains from the sale of immovable property located therein. Gains derived from the sale of any capital assets other than real property by a resident of a Contracting state who does not carry on a trade or business in the other Contracting state through a permanent establishment situated therein are exempt from tax in the source state.	Silent on the treatment of other income.
UNITED ARAB EMIRATES (UAE) **Signed: 21 November 2011** **In Force: 22 February 2017**	Period - 6 months for construction project and 4 months in a 12-month period for services.	Taxing rights are given to the state where the recipient is a resident. The host state also has taxing rights. Where the recipient is also a beneficial owner WHT capped at 5%.	Taxing rights are given to the state where the recipient is a resident. The host state also has taxing rights. Where the recipient is also a beneficial owner WHT capped at 10%.	Taxing rights are given to the recipient's state of residence. The host state has up to 10% taxing rights.	No provision on management and professional fees	Taxing rights from gains from the sale of immoveable property are given to the state of residence. Gains from the sale of all other property taxable in the residence state.	Any other income is taxed in the resident's state. The host state has taxing rights.
UNITED KINGDOM **Signed: 31 July 1973** **In Force: 30 September 1977**	Building site PE if present for over 6 months. Supervisory services create PE if done for over 6 months.	Provides for residence state taxation of dividends.	Provides for residence state taxation of interest.	Provides for residence state taxation of royalties.	Provides for residence state taxation of management and professional fees.	Taxing rights from gains from the sale of immoveable property are given to the source state. Gains from the sale of all other property taxable in the residence state.	Any other income is taxed in the resident's state.
ZAMBIA **Signed: 27 August 1968** **In Force: Date Unknown**	PE building site for 6 months.	Dividends taxable in the residence state.	Source based taxation of interest.	Residence based taxation of royalties.	No provision for management and professional fees.	No provision on treatment of capital gains.	No provision relating to other income.

Tabulation of Double Taxation Agreements in Rwanda

Tax Provisions in Rwandan DTAs

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
BELGIUM Signed: 16 April 2007 **In Force: 6 July 2010**	Building site for a period of more than 6 months. Services PE for periods exceeding in the aggregate 3 months in any twelve month period.	Residence state taxation for dividends. Source state may tax. Where the beneficial owner of the dividends is a resident of the residence state, the WHT is capped at 15 per cent of the gross amount of the dividends. Dividends will not be taxed in the source state where the beneficial owner of the dividends is a company residence state that hold 25% of the shares of the paying company, for an uninterrupted period of at least twelve months.	Interest taxed in the residence state. Source state may also tax. Where the beneficial owner of the interest is a resident of the residence state, the WHT is capped at 10 per cent of the gross amount of the interest.	Royalties taxed in the residence state. Source state may also tax. Where the beneficial owner of the royalties is a resident of the residence State, the WHT is capped at 10 per cent of the gross amount of the royalties.	Technical fees taxed in the residence state. Source state may also tax but the WHT is capped at 10 per cent of the gross amount of the interest.	Gains from immoveable property taxed in the source state. Gains from the sale of shares of property rich companies (i.e. where 50% or more of their value is from immoveable property) are taxable in the source state. All other gains taxable in the residence state.	Any other income is taxed in the residence state. The host state also has taxing rights.
JERSEY Signed: 26 June 2015 In Force: 27 June 2016	Covered. Period - 183 days for both services and installation/ construction projects. 90 days for the exploration of natural resources.	State in which the recipient is resident has taxing rights. The host state has up to 10% taxing rights.	Interest taxable in the residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. The host state has up to 12% taxing rights.	The host state has taxing rights for gains from immovable property. All other gains taxable in the residence state.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.
MAURITIUS **Signed: 20 April 2013** **In Force: 4 August 2014**	Covered. Period- 6 months for both services and installation/ construction projects.	State in which the recipient is resident has taxing rights. The host state has up to 10% taxing rights.	Interest taxable in the residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. Host state has up to 12% taxing rights.	The host state has taxing rights for gains from immovable property. All other gains taxable in the residence state.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
SINGAPORE Signed: 26 August 2014 **In Force: 15 February 2016**	Covered. Period- 183 days for construction/ installation project and services.	State in which the recipient is resident has taxing rights. The host state has up to 7.5% taxing rights.	Interest taxable in the residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. The host state has up to 10% taxing rights.	The host state has taxing rights for gains from immovable property. All other gains taxable in the residence state.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.
SOUTH AFRICA Signed: 5 December 2002 **In Force: 3 August 2010**	Covered. Period- 6 months for both services and installation/ construction projects.	State in which the recipient is resident has taxing rights. The host state has up to 10% taxing rights if the beneficial owner is a company with at least 25% shares and 20% in other cases.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. The host state has up to 10% taxing rights.	The host state has taxing rights for gains from both movable and immovable property.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.
TURKEY Signed: 1 December 2018 **In Force: 21 October 2020**	Covered. Period- 9 months for construction/ installation project and 183 days for services.	State in which the recipient is resident has taxing rights. The host state has up to 10% taxing rights.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. The host State has up to 10% taxing rights.	The host state has taxing rights for gains from both movable and immovable property.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.
UNITED ARAB EMIRATES (UAE) Signed: 1 November 2017 Status: Not In Force	Covered. Period- 6 months for both services and installation/ construction projects.	State in which the recipient is resident has taxing rights. The host State has up to 7.5% taxing rights.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host State has up to 10% taxing rights.	State in which recipient resides is where management/ professional fees is taxed. The host state has up to 10% taxing rights.	The host state has taxing rights for gains from both movable and immovable property.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.

Tabulation of Double Taxation Agreements in Tanzania

Tax Provisions in Tanzanian DTAs

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
CANADA **Signed: 15 December 1995** **In Force: 29 August 1997**	Covered. Period – 6 months for construction/ installation project and for services.	State in which the recipient is resident has taxing rights. The host state has up to 25% taxing rights; and 20% when a company owns at least 15%.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 15% if the beneficial owner is resident in the home state.	State in which recipient is resident has taxing rights. The host state has up to 20% taxing rights.	State in which recipient resides is where technical fees is taxed. The host state has up to 20% taxing rights.	The host state has taxing rights for gains from both movable and immovable property.	Any other income is taxed where the person resides. The host state has taxing rights when P.E is present.
DENMARK	Covered. Period – 6 months for construction/ installation project and services not covered.	State in which the recipient is resident has taxing rights. The host state has up to 15% taxing rights.	Interest taxable in residence state. The source state may also tax but WHT capped at 12.5%	Taxing rights are given to the state in which the recipient resides. The host state has up to 20% taxing rights.	State in which recipient resides is where technical fees is taxed. The host state has u to 20% taxing rights	The host state has taxing rights for gains from immovable property. Gains from alienation of all other gains taxable in the residence state.	Other incomes are taxed where the person resides. The host state has taxing rights when P.E is present.
FINLAND **Signed: 12 May 1976** **In Force: 27 December 1978**	Period - 6 months for installation/ construction projects.	Taxing rights are given to the state where the recipient resides. The host state has up to 20% taxing rights.	Interest taxable in residence state. The source state may also tax but WHT capped at 15%	Taxing rights are given to the state in which the recipient resides. The host state has up to 20% taxing rights.	Taxing rights are given to the state where the recipient resides. The state from where the fees arise has up to20% taxing rights.	The host state has taxing rights for gains from immovable property. Gains from alienation of all other gains taxable in the residence state.	All other income is taxed where the person resides.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
INDIA **Signed: 27 May 2011** **In Force: 12 December 2011**	Covered Period – 270 days for construction/ installation on project. Services covered for periods aggregating more than 183 days within any 12 month period.	Taxing right are given to the State where the recipient resides. The host state has up to 5% taxing rights if the recipient is a company with at least 25% of the shares; and 10% in all other cases.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	Royalties taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	No provision relating to management and professional fees.	The host state has taxing rights for gains from immovable property. Gains from the sale of property rich companies taxable in source state. Gains from the sale of shares in a company resident in a contracting state are taxable in that state. Gains from alienation of all other gains taxable in the residence state.	All other income is taxed where the person resides. The host state has some taxing rights where P.E is present.
ITALY **Signed: 7 March 1973** **In Force: 6 May 1983**	Covered. Period: Tax paid in Italy is deducted from the tax payable in Tanzania in so far as the credited amount doesn't exceed the Tanzania tax. 12 months for construction project but services is not covered.	Taxing rights are given to the state where the recipient resides. Host state has up to 10% taxing rights.	Interest taxable in residence state. The source state may also tax but WHT capped at 15%.	Taxing rights are given to the state in which the recipient resides. The host state has up to 15% taxing rights.	Management fees may be taxed in both contracting states.	The host state has taxing rights for immovable property. All other gains taxable in the residence state.	All other income is taxed where the person resides. The host state has some taxing rights where PE is present.
NORWAY **Signed: 28 April 1976** **In Force: 4 August 1978**	Covered. Period: 6 months for construction project but services is not covered.	Taxing rights are given to the state where the recipient resides. The host state has 20% to taxing rights.	Interest taxable in residence state. The source state may also tax but WHT capped at 15%.	Taxing rights are given to the State in Which the recipient resides. The host state has up to 20% taxing rights.	Covered. Taxing rights are given to the state where the recipient of the fees is a resident. The host state has up to 20% taxing rights.	The host state has taxing rights for immovable property. All other gains taxable in the residence state.	All other income is taxed where the person resides. The host state has some taxing rights where P.E. is present.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Management or professional fees	Capital Gains Tax (C.G.T.)	Other incomes
SWEDEN Signed: 2 May 1976 **In Force: 31 December 1976**	Covered. Period: 6 months for a construction/ installation project but services not covered.	Taxing rights are given to the state where the recipient resides. The host state has up to 25% taxing rights but only 15% if a company owns at least 15%.	Interest taxable in residence state. The source state may also tax but WHT capped at 15%.	Taxing rights are given to the state in which the recipient resides. The host state has up to 20% taxing rights.	Covered. Taxing rights are given to the state where the recipient of the fees is a resident. The host state has up to 20% taxing rights.	The host state has taxing rights for both movable and immovable property.	Other incomes are taxed where the person resides.
ZAMBIA Signed: 2 March 1968 **In Force**	Covered Period: 6 months for installation/ construction project but services not covered.	Taxing rights are given to the state where the recipient resides. Host State has no taxing rights.	Source state has primary taxing rights.	Taxing rights are given to the state in which the recipient is a resident if taxed. If the royalty is exempt in that state it shall be taxed at source.	Not covered. Tanzania retains all taxing rights.	The host state has taxing rights for both movable and immovable property.	Not covered. Tanzania retains all taxing rights.
SOUTH AFRICA Signed: 22 September 2005 **In Force: 15 June 2007**	Covered. Period: 6 months for construction/ installation project, 183 days for services.	Taxing rights are given to the state where the recipient is a resident. The host state to tax up to 10% of gross amount of dividends where the recipient of dividends is resident in the other state and is, the beneficial owner of the company that is paying dividends holding at least 15% of that company paying dividends; and 20% of the gross amount of the dividends in all other cases.	Interest taxable in residence state. The source state may also tax. Source state WHT capped at 10% if the beneficial owner is resident in the home state.	Taxing rights are given to the recipient's state of residence. The host state has up to 10% taxing rights.	Not covered. Tanzania retains all taxing rights.	The host state has taxing rights for both movable and immovable property. Gains from ships or aircrafts are taxed In the state in which the business.	Any other income is taxed in the resident's State. The host state has taxing rights where P.E is present.

Tabulation of Double Taxation Agreements in Uganda

Tax Provisions in Ugandan DTAs

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
DENMARK **Signed: 14 January 2000** **In Force: 8 May 2001**	Provided: Includes a 6-month time threshold for building site, construction, assembly or installation project or supervisory/ consultancy activity connected therewith.[50]	Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to a Danish resident up to 10% of the gross amount of the dividends if the BO[51] is a company directly holding at least 25%of the company paying the dividend; 15% in any other case.	Shared taxation between source state and residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a Danish resident at 10% of the gross amount of the interest.	Shared taxation between source state and residence state, but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a Danish resident up to 10% of the gross amount of the royalties. Royalties paid for the use of equipment is exempted.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda has the right to tax administration and management fees paid by a Ugandan resident (source) to a Danish resident up to 10% of the gross amount of the administration and management fees.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state. Other gains taxable in the residence state.	Residence state has the exclusive right to tax any other income of its residents, wherever arising.

49 See commentary in executive summary highlighting some key issues on the bigger tax risks faced by Uganda on Capital Gains Tax.
50 Art 5 para 3.
51 BO – Beneficial Owner.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
INDIA **Signed: 30 April 2004** **In Force: 27 August 2004**	Provided: Includes a 6-month time threshold for building site, construction, assembly or installation project or supervisory/ consultancy activity connected therewith.[52]	Shared taxation between the source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to an Indian resident (as source state) up to 10% of the gross amount of the dividend.	Shared taxation between the source state and the residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to an Indian resident up to 10% of the gross amount of the interest.	This treaty under article 12 provides for both royalties and fees for technical services. It provides for shared taxation between the Source state and the residence state but with a limited right to tax the income by the source state. Uganda may tax royalties or fees for technical services paid by a Ugandan resident (source) to an Indian resident up to 10% of the gross amount of the royalties.	Provided under article 12 with royalties as indicated above.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state. Gains from the alienation of shares of property rich companies taxable in the state where the property is located. Gains from the alienation of other shares taxable in the state of residence of the company. Other gains taxable in the residence state.	Residence state has the exclusive right to tax any other income of its residents, wherever arising.

52 Article 5 Paragraph 2(j).

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
ITALY **Signed: 6 October 2000** **In Force: 21 January 2006**	Provided: Deems the existence of a PE for where a building site or construction or assembly point, exists for more than 6 months A period (s) aggregating to more than 6 months in any 12-month period for the furnishing of services, including consultancy services through employees or other personnel.[53]	Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to an Italian resident (as a source state) up to 15% of the gross amount of the dividends.	Shared taxation between source state and residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to an Italian resident up to 15% of the gross amount of the interest.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to an Italian resident up to 10% of the gross amount of the royalties.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda has the right to tax technical fees paid by a Ugandan resident (source) to an Italian resident up to 10% of the gross amount of the technical fees.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state. Other gains taxable in the residence state	Residence state has the exclusive right to tax any other income of its residents, wherever arising.
MAURITIUS **Signed: 19 September 2003** **In Force: 21 July 2004**	Provided: Includes a 6-month time threshold for a building site, a construction, installation or assembly project or supervisory activities. A period or periods aggregating to more than 4 months within any 12-month period for the furnishing of services, including consultancy services through employees or other personnel.[54]	Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to a Mauritian resident (as source state) up to 10% of the gross amount of the dividends.	Shared taxation between source state and the residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a Mauritian resident up to 10% of the gross amount of the interest.	Shared taxation between source state and the residence state but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a Mauritian resident up to 10% of the gross amount of the royalties.	Shared taxation between source state and the residence state but with a limited right to tax the income by the source state. Uganda has the right to tax technical fees paid by a Ugandan resident (source) to a Mauritian resident up to 10% of the gross amount of the technical fees.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state.	Residence state has the exclusive right to tax any other income of its residents, wherever arising.

53 Article 5 para 2 h and j.
54 Article 5 para 3.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
NETHERLANDS **Signed: 31 August 2004** **In Force: 21 July 2004**	Provided: Includes a 6-month time threshold for a building site, a construction, installation or assembly project or supervisory activities. A period or periods aggregating to more than 4 months within any 12-month period for the furnishing of services, including consulting services through employees or other personnel.[55]	Shared taxation between the source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to a Dutch resident (as source state) up to 15% of the gross amount of the dividends. Further limitations to source state taxation; • No tax on the dividends paid if BO is a company holding at least 50% of the paying company. • Tax up to 5% of the gross amount if recipient holds directly less than 50% of the capital of the company paying the dividend.	Shared taxation between the source state and the residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a Dutch resident up to 10% of the gross amount of the interest.	Both states have right to tax but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a Dutch resident up to 10% of the gross amount of the royalties. Royalties paid for the use of equipment is exempted.	Not covered	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state Other gains taxable in the residence state	Residence state has the exclusive right to tax any other income of its residents, wherever arising.

55 Article 5 para 3.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
NORWAY **Signed: 7 September 1999** **In Force: 16 May 2001**	Provided: Includes a 6-month time threshold for a building site, a construction, installation or assembly project or supervisory activities. A period or periods aggregating to more than 4 months within any 12-month period for the furnishing of services, including consulting services through employees or other personnel. [56]	Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to a Norwegian resident up to: • 10% of the gross amount of the dividend if the BO[57] is a company directly holding at least 25%of the company paying the dividend; • 15% in all other cases.	Shared taxation between source state and residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a Norwegian resident up to 10% of the gross amount of the interest.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a Norwegian resident up to 10% of the gross amount of the royalties. Royalties paid for the use of equipment is exempted.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda has the right to tax administration and management fees paid by a Ugandan resident (source) to a Norwegian resident up to 10% of the gross amount of the administration and management fees.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state. Gains from the alienation of shares of a company resident in another state taxable in the source state. Other gains taxable in the residence state.	Residence state has the exclusive right to tax any other income of its residents, wherever arising.

56 Article 5 para 3.
57 BO – Beneficial Owner.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
SOUTH AFRICA **Signed: 27 May 1997** **In Force: 9 April 2001**	Provided: Includes a 6-month time threshold for a building site, a construction, installation or assembly project or a supervisory or a consultancy activity other personnel. [58]	Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. Uganda has the right to tax the dividend paid to a South African resident up to: • 10% of the gross amount of the dividend if the BO[59] is a company directly holding at least 25%of the capital of the company paying the dividend; • 15% in all other cases.	Shared taxation between source state and residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a Norwegian resident up to 10% of the gross amount of the interest.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a South African resident up to 10% of the gross amount of the royalties. Royalties paid for the use of equipment is exempted	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda has the right to tax administration and management fees paid by a Ugandan resident (source) to a South African resident up to 10% of the gross amount of the technical fees.	Residence state has the exclusive right to tax any other income of its residents, wherever arising.	Right to tax other income allocated to the state where it is arising.

58 Article 5 para 3.
59 BO – Beneficial Owner.

Country/ Region	Permanent Establishment (P.E.)	Dividends	Interests	Royalties	Technical fees/ Administration and management fees	Capital Gains[49]	Other incomes
UNITED KINGDOM **Signed: 23 December 1992** **In Force: 21 December 1993**	Provided: Includes a 183-day time threshold for a building site or a construction, installation project.[60]	• Shared taxation between source and resident state but with a limited right (%) to tax the income by the source state. • Uganda has the right to tax the dividend paid to a UK resident (as source state) up to 15% of the gross amount of the dividends.	Shared taxation between Source state and residence state, but with limited right to tax the interest by the source state. Uganda may tax interest paid by a Ugandan resident (source) to a UK resident up to 15% of the gross amount of the interest.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda may tax royalties paid by a Ugandan resident (source) to a UK resident up to 15% of the gross amount of the royalties.	Shared taxation between source state and residence state but with a limited right to tax the income by the source state. Uganda has the right to tax technical fees paid by a Ugandan resident (source) to a UK resident up to 15% of the gross amount of the technical fees.	Gains from the alienation of immoveable property taxed in the source state. Gains arising from the disposal of movable property belonging to a PE in the source state are taxable in the source state. Other gains taxable in the residence state.	Residence state has the exclusive right to tax any other income of its residents, wherever arising. Exception on income paid out of trusts.
ZAMBIA **Signed: 24 August 1968** **In Force**	Provided: Includes a 6-month time threshold for a building site or construction, installation, or assembly project. Supervisory activities connected with building site or construction, installation or assembly project or a consultancy activity other personnel.[61]	Resident state has taxing right, source state taxation exempted.	Source state taxation exempted unless interest is not subject to tax in residence state.	Source state taxation exempted if royalty is subject to tax in residence state.	Not covered.	Not covered.	Not provided.

60 Article 5 para 3.
61 Article 5 para 3.

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