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# Country Report: Uganda

## Annex A to SEO Report "Strengthening Tax Systems"


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# 1 List of abbreviations

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

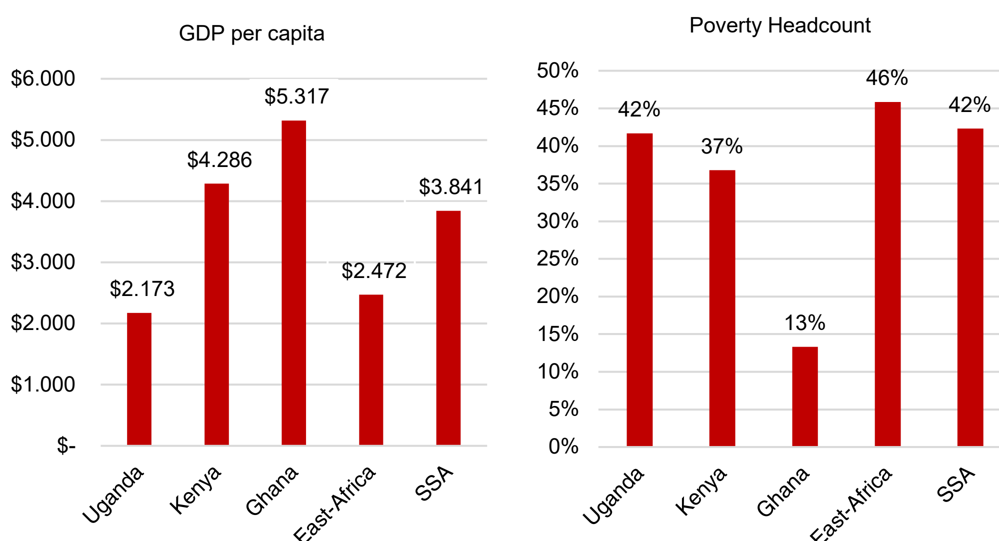
| | |
|---|---|
| **TP** | Transfer Pricing |
| **UN** | United Nations |
| **UN-DESA** | United Nations Department of Economic and Social Affairs |
| **URA** | Ugandan Revenue Authority |

# 2 General Background

## 2.1 Economic background[1]

**Uganda is a relatively poor country in East Africa, with a lower GDP per capita and average poverty headcount compared to other countries in the region and in Sub-Saharan Africa (SSA).** Both Kenya and Ghana (our other case study countries) have a GDP per capita that is (more than) twice as high as in Uganda (see Figure 1.1a). Moreover, the GDP per capita in Uganda is slightly below the East African average and well below the Sub Sahara African average (almost 50 percent). Compared to Kenya and Ghana, Uganda also has a higher share of people that live on less than USD 1.90 per day (Figure 1.1b). However, the poverty headcount is at the same level as the SSA average and even slightly below the East African average.

Figure 1.1 Uganda is a relatively poor country, about average for East Africa




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

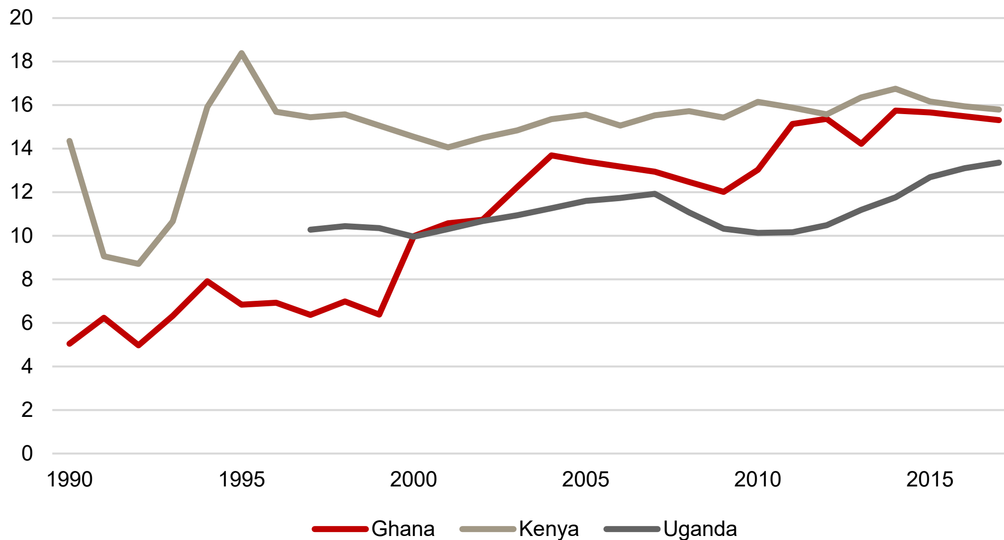
## 2.2 Revenue mobilisation

**Uganda's tax-to-GDP ratio increased gradually since 2010 but remains low at 13.5 percent.** During the period 1997-2010, total tax revenues in percent of GDP were broadly stagnant, with a gradual increase from 10 to 12 percent during 1997-2007 fully undone by a reversal from 12 to 10 percent during 2007-2010. During 2010-2017, the tax ratio increased by around 0.5 percentage

[1] Although Uganda participates in IMF's General Data Dissemination System (GDDS), the IMF (2019) notes that there are still shortcoming in the data quality: "Overall data provision is adequate for surveillance purposes, although some shortcomings remain".

points per year, to reach 13.4 percent in 2017 (see Figure).[2] However, it is estimated to have been stagnant at that level for the past 3 years.[3]

Figure 1.2 Uganda has the lowest tax-to-GDP ratio of the selected case study countries




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

**In their recently concluded medium-term Domestic Revenue Mobilisation Strategy (DRMS), the Ugandan government aims to increase domestic revenue by 2.5 percent of GDP over the next five years.** An economic expert on Uganda noted that 0.5 percent of GDP per year was possibly too ambitious, particularly in light of the latest COVID-19 developments. In its most recent report on Uganda (May 2020) the IMF projects that the COVID-19 impact (a combination of lower projected growth and additional tax exemptions[4]) will result in a domestic revenue shortfall of 1 percent of GDP in FY2019/20 and 1.7 percent of GDP in FY2020/21.[5]

**According to NGOs, Uganda misses out on a substantial amount of tax revenue because there is no clear policy on tax incentives and exemptions.** In their 'Fair Tax Monitor Uganda,' Oxfam Uganda, Oxfam Novib, SEATINI, Tax Justice Network Africa, and Make Tax Fair (2018) cite estimates from the Ugandan Revenue Authority (URA) that Uganda's foregone revenue from tax incentives and exemptions alone amounted to more than USD 3 billion from 2010/11 to 2016/17. The amount of revenue lost in 2016/17 was estimated to approximate the entire agricultural budget of the country: around USD 234 million in 2016/17. In a more recent report,

[2] Note that the tax-to-GDP ratio was initially estimated to be around 3 percentage points higher. However, an economic expert on Uganda noted that in 2019, the Ugandan authorities rebased their GDP estimates, as a result of which the tax ratio turned out to be 3 percentage points lower than previously thought.

[3] The last available IMF estimate in the World Revenue Longitudinal Data is 13.4 percent in 2017 (see chart). However, in its latest report on Uganda, the IMF (2020) estimates a tax-to-GDP ratio of 12.8 percent in 2017/18, 13.9 percent in 2018/19, and 13.6 percent in 2019/20. The IMF projects the tax ratio to gradually increase to 15.2 percent by 2024/25.

[4] The additional tax exemptions introduced as part of the COVID-19 policy responses were new exemptions for items used for medical use. Several interviewees with tax policy experience noted that Uganda has too many tax exemptions and tax holidays, in particular for foreign investors, but also for e.g. the agribusiness sector.

[5] As compared with earlier IMF projections in January 2020. (IMF 2020)

published in May 2020, the Tax Justice Alliance in Uganda (2020) estimated that tax incentives and exemptions have cost Uganda around 4 to 5 percent of its GDP.

**The IMF (2017) cites three main raisons for tax revenue leakage in Uganda:**
1. The widespread use of tax incentives and exemptions;
2. Aspects of the domestic tax code (ITA) that can facilitate cross border tax planning; and
3. Tax avoidance using Uganda's network of double tax treaties (DTTs).

**The recently concluded Domestic Revenue Mobilisation Strategy also notes that "the increased integration of Uganda's economy with the global economy introduces significant tax risks which erode tax yields."** In particular, the DRMS states that the pursuit of investment, employment and growth opportunities has "fueled tax competition and places pressure on policy-makers to match various initiatives with a suite of base-eroding domestic tax incentives." This challenge is further compounded by the fact that "most jurisdictions (including some of Uganda's major investment and trading partners), operate territorial tax systems, creating an incentive for off-shoring income that would ordinarily be classified as Ugandan-sourced." [6]

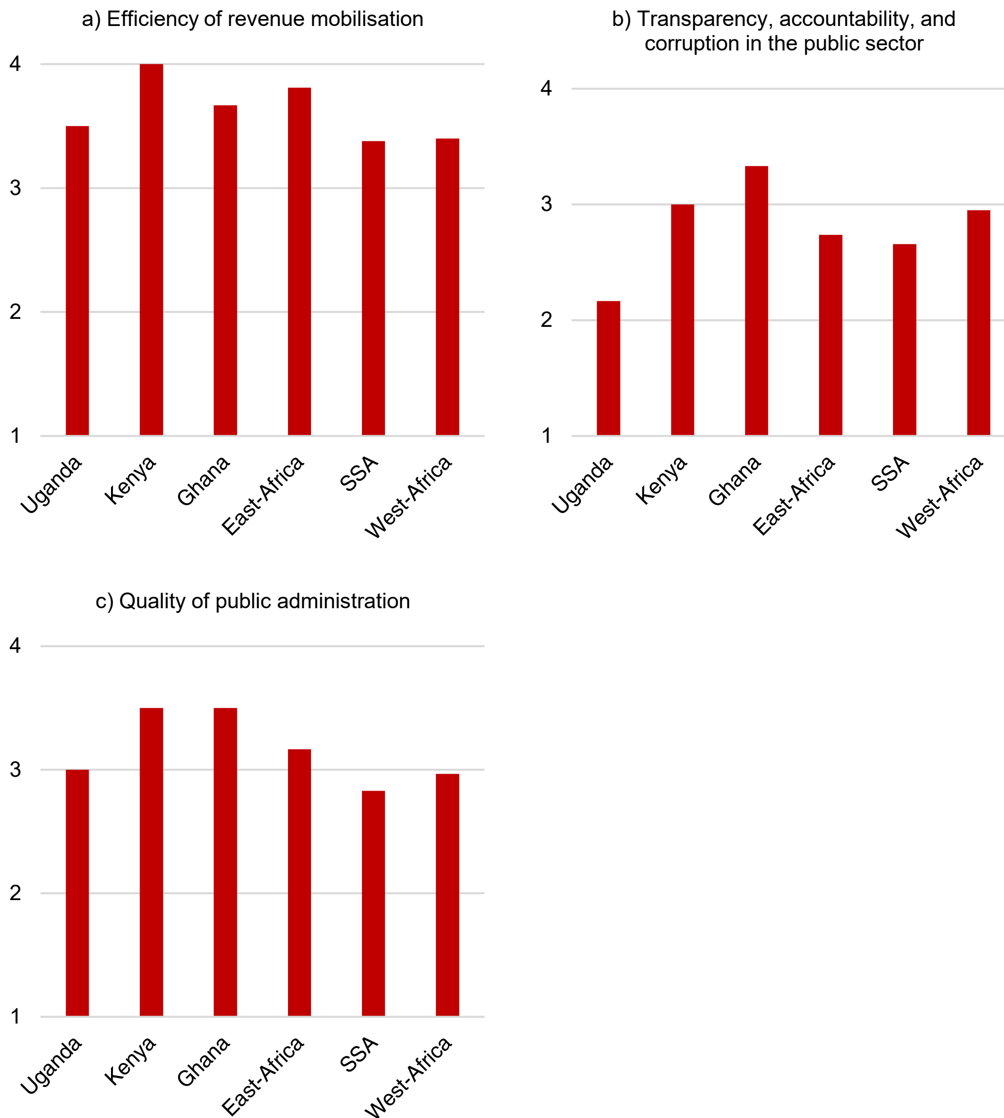
## 2.3 Governance indicators

**World Bank Country Policy and Institutional Assessment (CPIA) estimates[7] suggest that Uganda has an average level of efficiency when it comes to revenue mobilisation but scores more poorly on transparency and quality of public administration**. Uganda scores fairly similar and consistently between 3.3 and 3.7 points on a six-point-scale on all three CPIA ratings, as shown in Figure 1.3. Moreover, the ratings show little variance over time (not shown in the figure). These ratings are well above the (modest) average ratings of all Sub Sahara African countries included in the CPIA assessment. East African countries perform relatively better than the Sub Saharan Average. With respect to 'efficiency of revenue mobilisation', Uganda performs slightly below the East African average. However, like other African countries, Uganda still performs best on "efficiency of revenue mobilisation" and worst on "transparency, accountability and corruption".

[6] MFPED (2019), Domestic Revenue Mobilisation Strategy 2019/20 - 2023/24, pp 61.

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

Figure 1.3 Uganda provides a relative good implementation environment

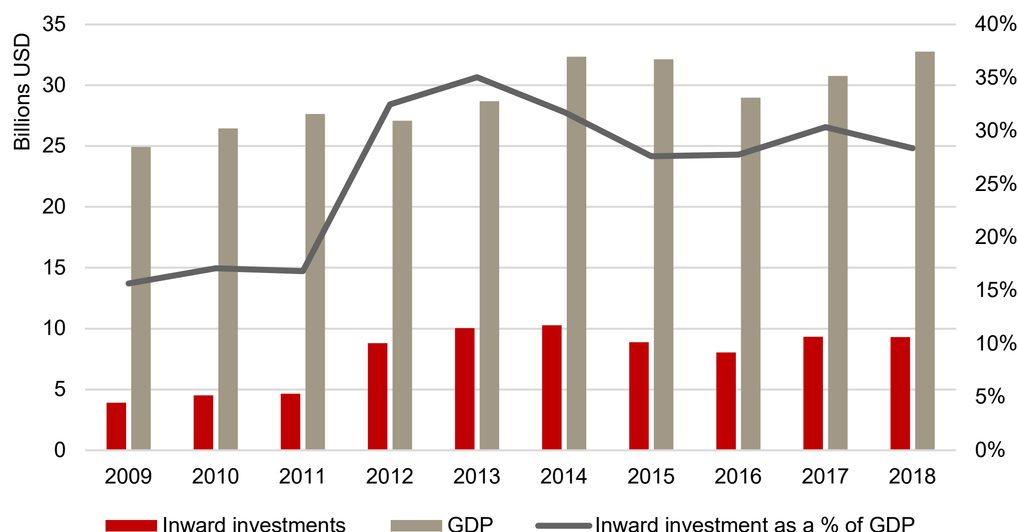



Source: Data from database: Country Policy and Institutional Assessment, Last Updated: 07/14/2020. CPIA efficiency of revenue mobilisation rating; CPIA transparency, accountability, and corruption in the public sector rating; CPIA quality of public administration rating (1=low to 6=high). Averages for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

## 2.4 Foreign direct investment

**The foreign direct investment (FDI) stock in Uganda has more than doubled in the past decade.** In absolute terms, the FDI stock in Uganda more than doubled from USD 3.9 billion in 2009 to USD 9.3 billion in 2018 (see Figure 1.4). Most of the increase occurred between 2011-2013, when FDI doubled from 17.5 to 35 percent of GDP in two years. Despite a small decline in 2015-2016, the FDI stock remained high at 30 percent of GDP in 2018. However, compared with other African countries, FDI into Uganda is still relatively low; both in absolute and relative terms. Of the case study countries, only Kenya has a lower (relative) FDI stock (not shown in figure).

Figure 1.4 Foreign direct investment into Uganda has grown; both in absolute and relative terms




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

**One of the main reasons for the fast increase in FDI has been the exploration and commercial development of the Ugandan oil sector by international oil economies.**[8] Following years of exploration, the British company Tullow Oil made five oil discoveries[9] in the Lake Albert basin of Uganda in 2006, which amounted to "commercial quantities" of 2.2 billion barrels of crude oil.[10] This represented the largest onshore oil discovery in sub-Saharan Africa since the 1980s, with a peak expected capacity of 216Kbd to raise Uganda to a mid-level African producer. Regulatory disputes between the Ugandan government and international oil companies (described below) have delayed development and production to at least 2022.[11]

**A major oil-related investment project in Uganda is the construction of the East Africa Crude Oil Export Pipeline (EACOP), estimated to cost USD 3.5 billion.** The plan is to build a 1,443 km crude oil export pipeline to transport the oil from Kabaale–Hoima in Uganda to the Chongoleani peninsula in Tanzania near the border with Kenya (after bids from neighboring Kenya were considered and passed up). Construction of the EACOP has been delayed since 2017 due to tax disputes (described below). As of May 2020, it was slated to start in April 2021.[12]

**The three foreign investors in the EACOP pipeline are Tullow Oil (UK), Total (France), and the China National Offshore Oil Corporation (CNOOC).** In 2012, Tullow sold two-thirds of the EACOP pipeline project to CNOOC and Total for USD 2.9 billion (one third each).[13] Plans to sell another 22 percent were stalled in 2018 as the firms could not come to an agreement on the

8 https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf
9 https://www.tullowoil.com/about-us/our-story/
10 https://www.banktrack.org/project/east_african_crude_oil_pipeline#_
11 https://www.reuters.com/article/uganda-oil/chinas-cnooc-says-it-aims-to-take-a-stake-in-ugandan-oil-pipeline-idUSL8N24R1SZ
12 https://www.ecofinagency.com/public-management/1105-41345-construction-of-east-african-crude-oil-pipeline-eacop-to-start-in-april-2021
13 https://www.reuters.com/article/us-total-tullow-uganda-cnooc/tullow-oils-sale-of-stake-in-uganda-project-to-total-cnooc-dropped-idUSKCN1VJ16X

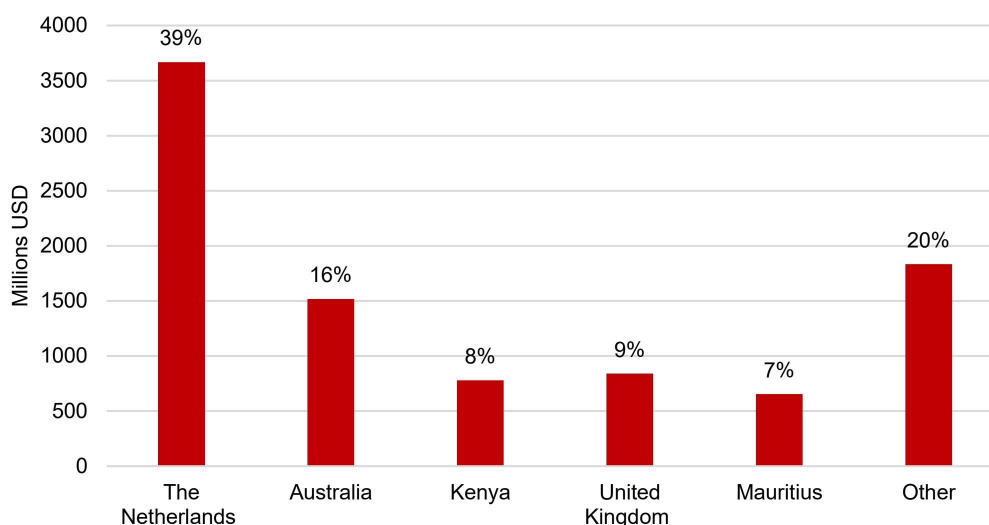
tax relief that Total and CNOOC would have paid to Tullow.[14] In April 2020, Tullow finalised an agreement to sell its full remaining 33.3 percent share to Total for USD 575 million[15] but the sale was subject to shareholder and Ugandan government approval, including a binding tax agreement.[16] Following the acquisition of Tullow's shares, Total would become the largest shareholder with a two-thirds stake in EACOP. However, CNOOC has a pre-emption right to take up half of the stake Total has agreed to buy.

**Total is also involved in another large oil sector investment: the construction of an oil refinery in Western Uganda near the oil field.** This refinery is expected to cost USD 4.3 billion, with completion expected in 2023.[17] General Electric (US) is expected to take 50 percent of the shares, while Total is expected to take 10 percent of the shares.[18]

## 2.5 Role of the Netherlands in FDI to Uganda

**Since 2012, the Netherlands has been the largest foreign investor in Uganda and is responsible for almost half of the FDI stock in Uganda.** According to the IMF's CDIS data, the Netherlands holds a foreign position of around USD 4 billion in Uganda, which is almost as much as the FDI stock from all other countries combined. Mauritius, which can be found on the EU list of non-cooperating jurisdictions and is well-known for being a tax haven, is also among the top-5 foreign investors in Uganda.

Figure 1.5 The Netherlands was by far the largest foreign investor in Uganda in 2018




Source: Coordinated Direct Investment Survey (CDIS), IMF. Inward foreign direct investment, measured in millions of USD based on inward investments reported by Uganda.

14 Ibid.
15 https://www.total.com/media/news/actualites/total-acquires-tullow-entire-interests-uganda-lake-albert-project
16 http://oilinuganda.org/features/companies/tullow-shareholders-set-to-approve-sale-of-assets-to-total/
17 https://www.ogj.com/refining-processing/article/17278792/uganda-approves-feed-epc-contractor-for-proposed-refinery
18 https://ugbusiness.com/2237/total-to-acquire-10-stake-in-uganda-refinery

**According to the Dutch embassy in Uganda, foreign investments in Uganda by Dutch companies are mainly directed at the agribusiness sector.** According to an embassy representative, Dutch investments are related to horticulture (flower production), milk processing, and agricultural equipment. In addition, five of the largest dairy consulting agencies from the Netherlands are now active in Uganda. In the representative's view, this is explained by the fact that the country has the potential for high agricultural productivity (Uganda has 50 percent of all arable land in east Africa region), an emerging middle-class with growing purchasing power, access to raw materials, and a strategic 'hub location' in East Africa ("think of Uganda as the Netherlands of East Africa"). The Dutch government, through programs such as Trademark East Africa, is therefore investing significant resources into agricultural value chain development, with the aim of further opening up the agricultural sector for private investment by Dutch and other companies.

**However, as we will argue below, it is likely that the majority of 'Dutch' FDI in Uganda comes from non-Dutch companies that use special purpose vehicles in the Netherlands for tax optimisation reasons.** According to inward FDI as reported by Uganda, the Netherlands has been among the largest investors in Uganda since 2010 and has topped the ranks ever since 2012, when it already constituted USD 3.9 billion (see Figure 1.6). The outward FDI as reported by the Netherlands (DNB, 2019) also shows a steep increase around 2013 after which it remained high. However, in absolute numbers, the outward FDI as reported by the Netherlands is only a fraction of the inward FDI as reported by Uganda: USD 1.4 billion versus USD 4.2 billion on average since 2013. Noteworthy, the Netherlands reports two data series on outward FDI: inclusive of special financial institutions (SFIs) (shown in Figure 1.6) and exclusive of SFIs (not shown in Figure 1.6). Based on the data exclusive of SFIs, the Netherlands has held a foreign position of only maximum USD 17 million (around 0.15 percent of the inward FDI as reported by Uganda). These three data streams result in two conclusions: 1) at least 99 percent of the "Dutch" FDI position in Uganda is due to SFIs (based on outward FDI as reported by the Netherlands), and 2) the share of SFIs is likely to be even larger given the large reporting differences between the Netherlands and Uganda.[19] A study by the International Centre for Tax and Development (ICTD) therefore concluded already in 2016 that 95 per cent of investment coming into Uganda from the Netherlands originated elsewhere.[20]

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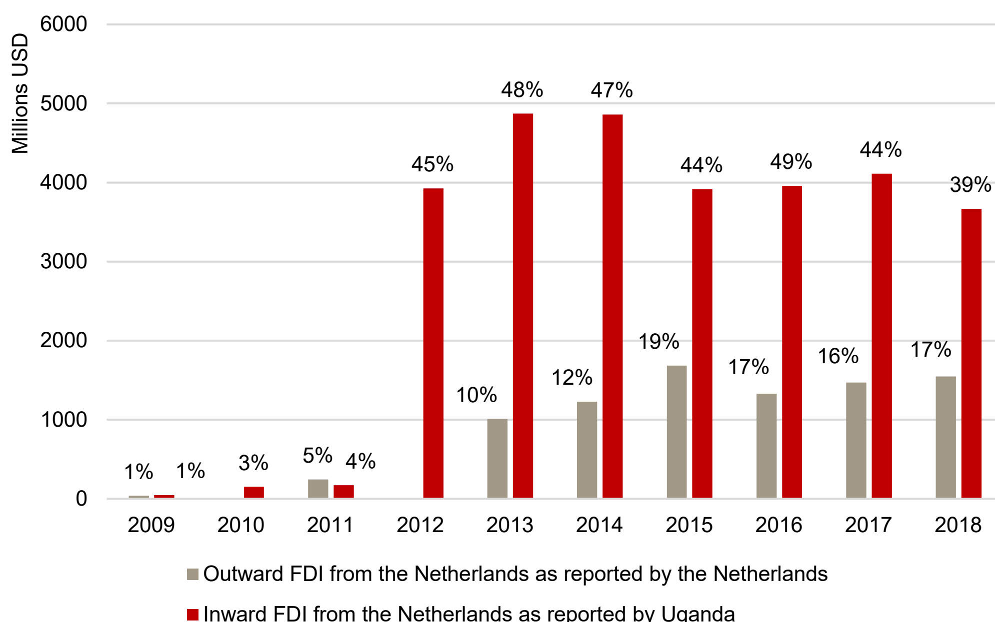
[19] The assumption here is that the full difference between outward FDI exclusive SFIs as reported by the Netherlands and inward FDI as reported by Uganda is explained by the presence of SFIs located in the Netherlands.

[20] A similar point was made by Hearson and Kangave (2016).

Figure 1.6 Uganda and the Netherlands report large differences in FDI




Source: Coordinated Direct Investment Survey (CDIS), IMF and DNB (2019). FDI stocks.

**One of the main reasons for the large FDI stock from the Netherlands, as reported by Uganda, is that all three oil companies (Total, Tullow, and CNOOC) have been using Dutch conduit companies for their Ugandan oil sector investments.** According to Segyawa and Mulder (2015), this use of Dutch conduit companies is known as "the Dutch Sandwich; you put a Dutch company in between and then you become a Dutch investor."

- **Total** owns its rights through the Dutch incorporation, Total E&P Uganda BV (TEPU), which is a subsidiary of Total S.A., the multinational oil, gas, and petrochemical conglomerate headquartered in Paris, France.
- **Tullow** has been using Tullow Overseas Holdings BV, a holding company incorporated in the Netherlands.
- **CNOOC**'s Ugandan subsidiary have also been reported to be owned by a Dutch BV, CNOOC Netherlands BV.[21] In addition, CNOOC owns its petroleum rights through the British Virgin Islands, where it owns its 33.3 percent stake of the EACOP Project.[22]

**At least three major telecoms companies are known to have also used subsidiaries in the Netherlands for their investments in Uganda: Zain International (Kuwait), Bharti Airtel (India), and MTN (South Africa).**

- Zain Africa BV owns assets in 15 African countries and had a 100 per cent shareholding in Celtel Uganda Holdings BV, which in turn owned 99.99 per cent of Celtel Uganda Limited.[23] Prior to 2010, Zain Africa BV in turn was 100 percent owned by Zain International BV, another Dutch subsidiary.

21 Schenkel (2020a) and
22 http://eacop.com/publication/view/east-african-crude-oil-pipeline-eacop-project-update/
23 "How Uganda Is Surrendering Trillions in Tax Agreements to Multinational Firms," 13 August 2019 https://allafrica.com/stories/201908130800.html

- Bharti Airtel Africa BV encompasses the African subsidiaries of Bharti Airtel Limited India (Bharti), the leading telecom operator in India.[24] Bharti Airtel International Netherlands BV (BAIN) is the holding company of Bharti Airtel Africa BV.
- The third telecoms giant which is known to have used a Dutch BV for its international sales transactions is MTN Group Limited (formerly M-cell), which in April 2020 was awarded "the most valuable telecom brand in Africa."[25]

**Through their Dutch subsidiaries, Zain and Bharti Airtel have been able to use Uganda's DTT with the Netherlands to avoid capital gains taxes on the sale of Celtel Uganda (later renamed Airtel Uganda).**[26] In 2010, Zain International BV sold Zain Africa BV for USD 10.7 billion to Bharti Airtel International Netherlands BV. The transfer of the shares in Zain Africa BV took place in the Netherlands, and the telecom companies argued that the sale only involved changes of ownership in the Netherlands. However, the sale effectively involved a change in ownership of mobile businesses in several African countries, including Celtel Uganda (subsequently renamed Airtel Uganda), which by 2013 became the second largest mobile telephone network in Uganda.[27] According to Schenkel (2020b), Airtel has been able to avoid at least USD 25 million in tax payments to Uganda through its Dutch subsidiary (which he reports to have a balance sheet of USD 6 billion), but would likely also have operated in Uganda without the Dutch holding (i.e. the Dutch DTT did not necessarily generate more FDI than otherwise would have happened). As discussed in the next section, the Ugandan Revenue Authority (URA) has used litigation in an attempt to recover capital gains tax revenues from the sale of Celtel Uganda.[28]

**Similarly, MTN was able to use the Dutch DTT to avoid taxes on a recent sales transaction concerning its tower operations.** On 31 December 2020, MTN decided to sell its interest in hundreds of Ugandan transmission towers to American Tower Corporation, through its subsidiary registered in Amsterdam (Uganda Tower Interco BV) to American Towers' own Dutch subsidiary (AT Sher Netherlands Coöperatief UA).[29] According to Schenkel (2020b, p. 9), this transaction would have been taxed in Uganda if it were not for the Dutch DTT. The sales operation was expected to close in the first quarter of 2020, allowing MTN to generate a profit of USD 426 million.

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[24] In 2013, the Dutch development bank FMO invested USD 45 million in financing for the expansion of various African subsidies of Bharti via BAIN to increase the telecoms industry in Africa: https://www.fmo.nl/project-detail/43411

[25] https://brandfinance.com/wp-content/uploads/1/brand_finance_telecoms_150_2020_preview_1.pdf

[26] Article 13 (4) allows the taxation of incomes of the alienation of shares in hands of the alienator's residence country. This is a standard provision for the OECD Model, which is not a problem in itself. The problem might be that this transaction was abusive (artificial creation and use of the Dutch SPV) whilst the treaty does not contain anti-avoidance provisions applicable to real estate companies or a general PPT rule. These provisions could potentially be applied if the transaction was indeed abusive.

[27] In 2013, Airtel Uganda acquired the Ugandan assets and subscribers of Warid Telecom (UAE) for USD 100m. As of late 2019, Airtel Uganda had a 44 percent market share compared to MTN Uganda's 47 percent share, while Africell Uganda has 9.0% share. As of April 2020, Airtel Uganda is estimated to have 11.5 million customers and recorded profits of USD 90.5m in 2018, a 30 per cent increase from 2017. https://www.monitor.co.ug/Business/Finance/Airtel-Uganda-is-only-profitable-unit-in-East-Africa/688608-5297674-37alukz/index.html

[28] It appears that capital gains tax avoidance was possible because the 2004 DTT with the Netherlands does not contain Article 13 (4) of the OECD Model Convention (real estate clause).

[29] Schenkel (2020b) and Ecofin Agency (2020).

## 2.6 Tax disputes involving the DTT between Uganda and the Netherlands

**The URA has won a protracted legal dispute involving Tullow Overseas Holdings BV (Netherlands) and Heritage Oil (Jersey).** In 2010, Jersey-based Heritage Oil and Gas Company Limited (HOGL) planned to sell its 50 percent stake in Uganda's oil fields for USD 1.5 billion to its Dutch incorporated holding company, Tullow Overseas Holdings BV,[30] which benefited from the Dutch DTT with Uganda. Heritage Oil chose to re-domicile from Bahamas to Mauritius to take advantage of the Mauritius-Uganda DTT in an attempt to avoid paying taxes. The URA nevertheless imposed a capital gains tax on this sale of USD 404 million. Heritage appealed, claiming the sale was not taxable under Ugandan law. This resulted in a four-year tax dispute in Uganda's Tax Appeals Tribunal and a commercial court in London.[31] The Ugandan authorities prevented the approval of the sale until Heritage paid the URA USD 121.5 million, a third of the original tax demand, and deposited the remaining USD 283 million in an escrow account pending arbitration, which Heritage hoped to recuperate. In 2011, Tullow paid the remaining USD 283.5 million plus an additional USD 30 million requested by the URA. After four years of legal dispute, the URA won its case. Subsequently, Tullow successfully sued Heritage Oil to reclaim the money.[32]

**Other major tax disputes have involved Tullow's sale of shares in the EACOP pipeline project to Total.** In 2015, Total E&P Uganda used the Bilateral Investment Treaty (BIT) between the Netherlands and Uganda[33] to file a request for arbitration before the International Center for Settlement of Investment Disputes (ICSID), an arm of the World Bank that facilitates resolution of international disagreements among investors.[34] The tax liability was not disclosed but was estimated at USD 30 million, related to the imposition of stamp duty by URA on the acquisition of Total's interest. In 2020, Tullow and Total agreed with the Government of Uganda on the tax treatment of the USD 575 million purchase by Total of Tullow's remaining shares in EACOP, as a result of which Total was to remit USD 14.6 million in taxes (about 2.5 percent) on behalf of Tullow Uganda following the sale.[35] This amount seems very low compared to a capital gains tax rate of 30-35 percent on the sale of shares.[36] Total and Tullow now plan to sign a binding tax agreement with the Ugandan government.[37]

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30 The actual location of this BV is unknown: https://www.dnb.com/business-directory/company-information.custodial-trust-services.nl.na.onbekend.html?page=1

31 https://allafrica.com/stories/201908130800.html

32 https://www.reuters.com/article/tullow-heritage-uganda/heritage-tullow-uganda-tax-squabble-reaches-uk-court-idUSL6N0C3CNB20130312?feedType=RSS&feedName=rbssEnergyNews

33 This BIT had been signed between the Netherlands and Uganda in 2000, and gave all Dutch investors in Uganda the right to pursue arbitration before the World Bank court if they feel treated unfairly. According to Segyawa and Mulder (2015), this turned "the treaty into a tool to drag a state before a tribunal of three men in Washington, having a commercial background and the ability to award billion dollar fines, without a possibility to appeal. If Uganda is condemned to a compensation but refuses to pay, the company has the right to seize Ugandan assets in the world." The BIT was later cancelled in 2017: http://annualreport.bothends.org/uganda-terminates-investment-treaty/

34 https://af.reuters.com/article/ugandaNews/idAFL6N0WW4NE20150331. This article noted that Tullow Oil also had an ongoing case at the ICSID.

35 https://www.independent.co.ug/uganda-govt-happy-with-total-tullow-deal/

36 https://www.independent.co.ug/uganda-reviewing-double-taxation-agreements-to-stop-tax-leakages/

37 https://www.petroleum-economist.com/articles/upstream/exploration-production/2020/total-grabs-a-ugandan-bargain

**The Ugandan Revenue Authority (URA) also used litigation in an attempt to recover capital gains tax revenues from the sale of Celtel Uganda via the Netherlands.** As explained above, the telecom giants Zain and Bharti Airtel appeared to use Uganda's DTT with the Netherlands to avoid capital gains tax on the sale of Celtel Uganda. In 2011, the URA made a tax assessment of USD 85 million on the capital gains realised from the disposal of shares from Zain to Bharti Airtel. Zain International BV objected to the assessment and stated that the transaction only concerned the transfer of shares of Zain Africa BV in the Netherlands, and that no shares in Celtel Uganda Ltd were disposed of.[38] The URA then appealed and made an objection decision stating that the transaction was one of gain arising from the disposal of an interest in immovable property located in Uganda (Celtel Uganda). While the Uganda court of appeal ruled that URA did have the jurisdiction to raise a proper tax assessment against Zain international BV, the case was granted a temporary injunction[39] and set aside for procedural impropriety. As of August 2019, the case remained under arbitration.

[38] Celtel Uganda Ltd's shares in Uganda were not transferred and its property, movable or immovable, was not disposed of.

[39] https://hakipensheni.blogspot.com/2014/02/african-taxmen-mncs-watching-landmark.html

# 3 Capacity building activities

## 3.1 Bilateral activities

Table 3.1 The Netherlands financed 12 bilateral activities in Uganda from 2013 to 2019

| Activity | Programme | Year | Organisation |
|---|---|---|---|
| Exchange of Information | Strengthening tax systems | 2014 | MoF/NTCA |
| Tax treaties maintenance and administration (seminar in Amsterdam) | Capacity Building in Taxation | 2014 | IBFD |
| International taxation: principles and application in the Ugandan context | Capacity Building in Taxation | 2015, 2016 | IBFD |
| Offshore Entities – Past, Present and Future. (seminar in Amsterdam) | Capacity Building in Taxation | 2016 | IBFD |
| Compliance Risk Management (CRM) | Promoting DRM in partner countries | 2017 | MoF/NTCA |
| International taxation (study visit) | Promoting DRM in partner countries | 2017 | MoF/NTCA |
| Auditing | Promoting DRM in partner countries | 2017-2018 | MoF/NTCA |
| Learning and development | Promoting DRM in partner countries | 2017-2018 | MoF/NTCA |
| Congress on change management | Promoting DRM in partner countries | 2018 | MoF/NTCA |
| Management | Promoting DRM in partner countries | 2018 | MoF/NTCA |
| Timely filing (“tijdig aangifte”) | Promoting DRM in partner countries | 2019 | MoF/NTCA |
| TADAT assessment | Promoting DRM in partner countries | 2019 | MoF/NTCA |

Source: SEO Amsterdam Economics based on programme documentation. “MoF” stands for the Dutch Ministry of Finance, while “NTCA” stands for the Netherlands Customs and Tax Administration.

## 3.2 Multilateral programmes

**The contribution of the Netherlands towards multilateral programmes is generally speaking not earmarked** (see Table 2.2). Only with respect to the UN-DESA programme, the Netherlands contributed financially to a specific subset of activities (i.e. training in tax treaty negotiations, tax treaty administration, and in policies to prevent base erosion and profit shifting). The contribution to the IMF’s thematic funds is generally not earmarked, but the Netherlands asked the IMF to pay specific attention to anti-money laundering practices. With respect to the RMTF, the Netherlands asked the IMF to emphasise donor coordination whilst formally the funding remained unearmarked. Moreover, 70 percent of Dutch funding to the World Bank was earmarked for Central Africa and the MENA region, but none of the remaining funding was earmarked for specific activities in Uganda. Nevertheless, the Netherlands often took part in the programme’s steering committee in order to have a voice in determining the final activities.

Table 3.2 Between 2013-2019, the Netherlands supported 13 multilateral DRM-related programmes with activities in Uganda

| Name | Organisation | Theme | Period |
|---|---|---|---|
| Thematic Funds; TPA-TF[40] | IMF | TA | 01-07-2009 / 30-06-2013 |
| Thematic Funds; MNRW-TF[41] | IMF | TA | 01-07-2009 / 30-06-2013 |
| African Technical Assistance Centres (AFRITACs) | IMF | Support to regional (African) organisations on tax | 01-07-2009 / 31-06-2013 |
| AFRITAC Core | IMF | Support to regional (African) organisations on tax | 01-06-2015 / 31-05-2019 |
| Revenue Mobilisation Trust Fund (RMTF) | IMF | TA | 01-05-2016 / 30-06-2022 |
| ATAF | South African Revenue Service | Support to regional (African) organisations on tax | 01-11-2010 / 30-06-2014 |
| ATAF | ATAF | Support to regional (African) organisations on tax | 01-01-2014 / 31-12-2015 |
| TADAT Tax diagnostics | IMF (and World Bank) | TA | 01-01-2014 / 31-12-2018 |
| ATAF | ATAF | Support to regional (African) organisations on tax | 01-01-2017 / 31-12-2020 |
| Tax and Development | OECD | Developing countries participation BEPS | 01-01-2015 / 31-12-2017 |
| BEPS and TIWB support | OECD | Developing countries participation BEPS | 01-01-2017 / 31-12-2020 |
| Capacity building in DRM | UN-DESA | TA | 01-11-2017 / 31-12-2019 |
| Global tax program | WB | TA | 01-07-2018 / 30-06-2022 |

Source: MFA Assessment Memorandums (“beoordelingsmemoranda”) of the respective programmes. “TA” stands for Technical Assistance, now referred to as CD (Capacity Development).

## 3.3 Selected case studies

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

[40] Formerly referred to as one of the Topical trust funds (TPA)
[41] Formerly referred to as one of the Topical trust funds (MNRW)

these matters are not CD-activities in itself, they do relate to the multilateral OECD programmes and therefore we treat them as "case studies" for the purpose of this evaluation.[42]

Table 3.3 This evaluation covers 5 case studies in Uganda

| Name | Organisation | Years | Type |
|---|---|---|---|
| **CD activities** | | | |
| Training on International Taxation (Part I and Part II) | IBFD | 2015, 2016 | Bilateral |
| Training/workshop/study visit international taxation[43] | NTCA | 2017 | Bilateral |
| Offshore entities – Seminar | IBFD | 2016 | Bilateral |
| **Other** | | | |
| Analysis of the Ugandan tax treaty policy (including MLI and Netherlands-Uganda DTT) | - | - | - |
| Analysis of the Ugandan position with respect to BEPS | - | 2013-present | - |

Source: SEO Amsterdam Economics

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

43 The evaluation team has received insufficient information on this project to be able to complete this case study.

# 4 Case study 1: Position regarding BEPS

**This Chapter reviews Uganda's involvement in international cooperation in tax matters, in particular in the implementation of BEPS standards.** In particular, we review the country's participation in the following:

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

**Uganda has not been engaged in many initiatives on international cooperation in tax matters.** Uganda still needs to decide how to accommodate BEPS standards. Uganda has not joined IFB and did not sign the MLI, so implementation of the BEPS standards will need to take place through renegotiation of bilateral DTTs. Based on its medium-term Domestic Revenue Mobilisation Strategy (MFPED 2019), Uganda does plan to take a number of measures that are aligned with, or go in the direction of, BEPS standards.

## 4.1 International participation

### Inclusive Framework on BEPS

**Uganda has not yet decided to join the Inclusive Framework on BEPS (IFB).** Since it has not joined, the BEPS standards need to be introduced (if at all) alternatively. As an example, Uganda could renegotiate double taxation treaties in order to include anti-abuse clauses in line with BEPS minimum standards. The OECD/G20 BEPS Project delivers solutions for governments to close the gaps in existing international rules that allow corporate profits to "disappear" or be artificially shifted to low or no tax environments. The Inclusive Framework was established in June 2016 as a response to the G20's call for broad and consistent implementation of the BEPS package. IFB membership offers a country the opportunity to discuss and address all their issues in an international body that sets international standards on international tax cooperation on BEPS. As a non-member, Uganda does not take part in IFB initiatives helping member jurisdictions to implement BEPS standards and solutions.[44] The Ugandan authorities have not provided specific reasons for not joining the IFB, but there are some general reasons why developing countries, like Uganda, might question the added value of the IFB. Firstly, they could prefer not to commit to all the BEPS recommendations which all IFB members must introduce by joining the framework.

[44] Examples are the transparent use of tax rulings through exchange of information, limiting opportunities for treaty abuse by signing on to the MLI, abolishment or change of potential harmful tax practices such as preferential tax regimes (e.g. patent boxes), the transfer pricing regime, Country-by-Country reporting to the parent entity's tax administration, and measures against so-called "cash boxes".

Secondly, they might consider the costs of IFB membership too high, which comprise of both the membership fee (direct costs)and costs related to participating in meetings abroad (indirect costs). Finally, the lack of capacity to attend and contribute to all IFB initiatives could make it difficult to achieve the assumed goal of IFB membership, namely to influence decisions and solutions adopted by this forum.

**Beyond standard setting, the Inclusive Framework also aims for effective implementation, with a peer review and monitoring framework that will enhance a level-playing field.** By joining the IFB, countries commit to implement the four BEPS minimum standards that address critical issues like tax treaty shopping, tax rulings, harmful preferential tax regimes, transparency on multinationals' global operations and improved dispute resolution mechanisms. The IFB has 137 members as of September.[45]

## Global Forum on Transparency and Exchange of Information for Tax Purposes

**Uganda is one of the 161 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter Global Forum).** The Global Forum is the leading international body working on the implementation of global transparency and exchange of information standards around the world.

**Uganda was reviewed by peers on implementation of EOIR standards[46] and received the general rating "largely compliant".[47]** The Global Forum monitors and peer reviews the implementation of international standards on exchange of information on request (EOIR) and automatic exchange of information (AOI). The EOIR provides international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to a peer review assessment of their implementation of the EOIR standard. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements, as well as an overall rating.

## Convention on Mutual Administrative Assistance in Tax Matters (CMAAT)

**Uganda's legal framework in relation to exchange of information (EoI) and mutual administrative assistance in tax matters is fully in line with internationally accepted standards.** The CMAAT, developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010, is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance. The CMAAT provides a legal framework on exchange of information for tax purposes, the assessment and collection of taxes and all possible forms of administrative cooperation between states in tax matters. As many as 137 jurisdictions participate in the CMAAT as of September 2020, including 17 jurisdictions covered by territorial extension.

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[45] https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf

[46] See Global Forum (2015) and Global Forum (2016). Phase 1 covered the legal framework and Phase 2 covered the review of EOIR in practice.

[47] http://www.oecd.org/tax/transparency/GFratings.pdf

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

**Uganda has not signed the CbC MCAA but plans to take a number of measures regarding the exchange of information, including country-by-country reports.**[48] In particular, its Domestic Resource Mobilisation Strategy (DRMS) of October 2019 includes the following strategy on Exchange of Information:[49]

- Ensure that Uganda satisfies all the criteria for obtaining information available under the country-by-country reporting requirements of the Base Erosion and Profit-Shifting (BEPS) project.
- Enhance the sharing of information within Uganda and between tax jurisdictions to facilitate mutual support. This should include strengthening the platform for exchange of information by pursuing agreements to facilitate the automatic exchange of financial accounting information, country-by-country reporting by multinational enterprises, tax examinations abroad, mutual assistance procedures, and assistance in recovery.
- Consider signing an East African Community (EAC) Tax Information Exchange Agreement, as well as enhancing the application of the Multilateral Convention on Mutual Administrative Assistance in tax matters.[50]

## 4.2 Position of NGOs and CSOs regarding BEPS

**Non-governmental organisations (NGOs) and civil society organisations (CSOs) in Uganda interact frequently and, as it appears, in trust with the government on issues related to BEPS**. They appear to have good access to the URA and the MFPED, and have presented studies to them that highlight gaps in DTTs. NGOs mention the major shortcoming is that the OECD, rather than the UN model, served as the basis for the DTTs with developed countries.

**According to NGO and CSO interviewees, Uganda believes in the spirit of the BEPS process, but has thus far been reluctant to fully commit.** In their view, Uganda believes that BEPS recommendations are developed by OECD countries and reflect their interests rather than the interests of developing countries. Moreover, NGOs and CSOs regret that Uganda was not part of the decision process leading to BEPS and could therefore not influence its outcomes. In their view, the Ugandan government acknowledges that the country is losing out on revenue. However, they need to further prepare themselves before they can fully commit to BEPS ("as the devil is in the detail"). In the short term, they expect the Ugandan government to choose and implement only those provisions that it finds beneficial for Uganda. The areas that need improvement according to NGOs and CSOs are transfer pricing, digitalisation, issues regarding PE, source taxation and other harmful tax practices.

**NGO and CSO interviewees appreciate that the Ugandan government has been working on a better tax treaty model** (described in Case Study 2). In their view, the Ugandan government realises that some of the treaties that signed were not always beneficial for the country as a whole

48 https://www.oecd.org/tax/beps/CbC-MCAA-Signatories.pdf
49 MFPED (2019), pp. 64-65.
50 It is interesting to note that EAC also developed its own double tax treaty model: http://eacgermany.org/wp-content/uploads/2014/12/EAC-HandbookEOI_screen.pdf

(in the sense that they eroded the tax base). With regard to the negotiation of new DTTs, however, NGOs and CSOs noted a lack of transparency.

**A number of interviewees noted that limited capacity is an obstacle to BEPS implementation.** On the one hand, this is due to a lack of knowledge and capacity regarding complex technical issues such as transfer pricing, PE rules, and source taxation. On the other hand, there are simple capacity constraints of insufficient staffing. For instance, the international taxation team working on tax treaties cannot dedicate all of its efforts on studying DTTs, as it also has to work on other issues (such as income tax). In addition, a tax expert noted that the capacity of the URA is further limited by a major restructuring, which has involved many staff changes. Digitalisation was also noted by some as an area in need of further development.

**NGOs believe that positive effects on taxation can already be seen from the use of Automatic Exchange of Information (AEOI).** For example, an NGO representative explained the URA was able to use information from multinationals based in South Africa. Since the legal background for AEOI can be found in DTTs and MCAAT, international tax experts note that Uganda is now fully equipped with legal instruments to exchange information.

**NGOs believe one of the reasons for the government's reluctance in implementing BEPS is related to the perceived importance of attracting FDI for the national economy.** In general terms, foreign investors invest in the country with the promise of creating employment. According to NGOs, tax incentives are often very high due to tax competition between countries (leading to a "race to the bottom") and it is not clear whether tax incentives are really necessary to attract investments. This appears to be the case for the oil sector investments, which are specific to Uganda and could not be diverted to another country. Also, various representatives from NGOs and CSOs believe that employment that may be created for Ugandans are typically low-skill, lower paid jobs. In their view, management positions are often given to foreigners, and follow-up on FDI promises is largely missing. Damgaard et al. (2019) describe this phenomenon as 'phantom FDI', meaning that a very large share (40 percent) of global FDI ends up in empty corporate shells, creating no or a few jobs and having zero impact on innovation. Given the flows described in section 1.4, the share of phantom FDI in Uganda is probably even greater.

# 5 Case study 2: Uganda's tax treaty policy

## 5.1 Uganda's DTT network

**Uganda's current double tax treaty (DTT) network consists of nine DTTs in force.** In addition to its DTT with the Netherlands (described in Section 5.4), Uganda has bilateral DTTs with Denmark, India, Italy, Mauritius, Norway, South Africa, United Kingdom and Zambia. Other jurisdictions with which Uganda has signed a DTT, but for which the DTT is not in force, include Belgium, China, Egypt and the UAE. According to the IMF (2017), none of Uganda's DTTs comply with international best practice standards.[51]

**Uganda has not (re)negotiated any DTTs recently nor has it signed the MLI.** The most recently signed DTTs that are in force as of September 2020 were concluded long before the BEPS project, namely in 2003 (Mauritius) and in 2004 (India and the Netherlands). Since Uganda did not sign the MLI, it is difficult to assess its current treaty policy and the impact of the BEPS process, in particular regarding the implementation of solutions developed under the BEPS project.

**Uganda's DTTs do not include any general anti-avoidance clause (no PPT or LOB).** Uganda has neither included any specific main purpose test clauses nor any real estate provisions (similar to Article 13.4 OECD Model Tax Convention) in its DTTs. The concept of beneficial owner is usually used in case of dividends, interests, royalties and fees for technical assistance. Most DTTs do not contain exchange of information provisions consistent with EOIR international standards (e.g. DTTs with India, Norway or the Netherlands). Only the 2014 Protocol with Belgium was supplemented with an EOI provision in accordance with international standards.

**In general, the DTTs concluded by Uganda are source-country oriented treaties.** In other words, they contain relatively high withholding taxes on dividends, interests and royalties (usually at the level of 10 percent) and provide for withholding taxes on fees for technical services.[52] Some DTTs allow taxation of other incomes (e.g. India, Norway, Belgium) and payment for leasing of industrial, commercial or scientific equipment (Mauritius, India) in a source state.

## 5.2 Uganda's tax treaty policy

**The current tax treaty policy of Uganda is based on two pillars (IMF 2017):**

- Tax law provisions (generally the Income Tax Act (ITA)) governing taxation of non-residents (including international investors) on income derived from Uganda and of Ugandan residents on their foreign income;

[51] Uganda did conclude the DTT with Belgium, signed it on 26 July 2007 and amended it by protocol on 25 April 2014. According to Oxfam (2020) and the MLI template, this DTT still did not enter into force, and it is also not mentioned on the Belgian authorities' website. However, the 2017 IMF report on Uganda's tax policy does suggest that this treaty entered into force, hence its status remains to be clarified.

[52] In the DTT with the Netherlands, there are 10 percent WHT rates on interest and royalties, and 15 percent on dividends. The latter is however subject to tax exemption depending on the distribution of shares.

- The new Uganda DTT model is based on the UN Model and takes into account modifications recommended by the BEPS project and provisions of the MLI.

**According to Hearson and Kangave (2016), Uganda should seriously reconsider whether to enter into new DTTs at all**. Some of the reasons the authors mention are:

1. Double taxation can also be efficiently eliminated unilaterally.
2. DTTs always create a possibility for treaty shopping (especially the DTT with the Netherlands in this case). In addition, none of Uganda's treaties meet the standards set out in the UN model.
3. Mutual assistance is more efficient on the basis of multilateral treaties. Moreover, Uganda's DTTs do not contain full provisions for mutual assistance in accordance with international standards.
4. The high-profile Zain and Heritage court cases indicate that Uganda wishes to tax capital gains when business interests in Uganda are sold on by overseas investors. However, Uganda's DTTS are not fit for this purpose.

**They also recommended to consider terminating some existing DTTs, and to renegotiate all existing treaties starting with a treaty model stronger than the UN-model used at the time.** Based on investment and remittance data, the authors came to a prioritisation of renegotiation requests, based on an estimate of DTTs that were seen as responsible for the largest foregone revenues: the Netherlands, Mauritius, UK and China. According to the authors, these renegotiations need to be conducted on the basis of an improved distribution of taxing rights in Uganda's favour, versus a balanced negotiation. In order to make Uganda's DTTs better suit its needs, the authors recommended to include/adopt the following elements:

1. All elements of the UN model PE definition, with a 90-day period for construction sites and service PEs as per Ugandan law.
2. A 15 percent withholding tax rates across the board, including on technical service fees (as included in Uganda's treaty with the UK and its domestic legislation) with main the purpose tests for passive income (as suggested in the COMESA model).
3. All capital gains provisions from the UN model.
4. The Limitation of Benefits clause from the EAC model or the forthcoming new OECD provision (and later also the UN Model)
5. Provisions on the exchange of information and collection of taxes from the UN and EAC models.

**The IMF's (2017) reasoning is summarised as:**

*"A dramatic expansion of Uganda's tax treaty program may not be the highest and best use of government (especially Ministry of Finance and URA) resources. Policymakers should consider whether it is possible to achieve the same objectives as a DTT through a mix of unilateral measures in the Uganda laws governing taxation, agreements governing specific investments or concessions, bilateral or multilateral tax information exchange agreements (TIEAs), and bilateral or multilateral investment protection agreements, including sector specific instruments such as shipping and aircraft agreements."*

**According to the IMF (2017), the decision to enter into each specific DTT should be based on an overall cost-benefit analysis.** It suggests that Ugandan revenue loss is likely to be substantial from DTTs because of potential treaty-shopping practices. Therefore it recommends:

*"Best practice anti-abuse provisions in treaties can help to minimise—if not eliminate—this, and should be adopted by Uganda in all of its treaties to the extent possible. The Ugandan Cabinet has recently approved a model treaty and treaty policy, which largely represent modern best practice for source countries seeking to enter into DTTs. It will be highly advisable for the Ugandan government to follow the model provisions in negotiating all new treaties. To the extent that treaty partners can be induced to enter into re-negotiation of some treaty provisions, this too should be undertaken. Uganda will also want to consider whether to enter into the new Multi-lateral Instrument (MLI) to adjust the provisions of its existing treaties. Whether this will be helpful—and not all desirable changes are covered in the MLI—will depend upon the positions already taken in the MLI by all of Uganda's separate treaty partners. This needs to be carefully assessed in each case."*

**In its DRMS of October 2019, the Ministry of Finance (MFPED) itself now also notes the risks involved with DTTs.** On p. 61 it states that "recommended interventions at the international level such as the OECD/G20 BEPS actions go some way to addressing Uganda's international tax concerns, but do not fully cater for…. [the risks of] inequitable sharing of taxing rights under double taxation agreements (DTAs)." In particular:

*"While DTAs were initially contracted to assure foreign investors of a predictable and internationally-accepted tax environment, and to facilitate offshore tax administration, the evidence 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, undermining the income tax base. Recently, there has been a global shift towards a more balanced approach to DTAs which better 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.".*[53]

**The DRMS[54] therefore recommends the following interventions in tax treaty policy:**

- Renegotiate all existing DTTs to bring them in line with the Ugandan DTT policy. This is particularly relevant for the treaties with the Netherlands and Mauritius, both of which have had a high impact.
- Refrain from contracting new DTTs, although if required these should be aligned to the principles of the approved DTT policy.
- Rather than DTTs, the Government should focus on promoting Tax Information Exchange Agreements and Mutual Assistance Procedures (MAPs), consistent with global practice, to strengthen URA's compliance efforts. 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.

**With regard to the capacity of URA to effectively apply anti-abuse clauses (should they be adopted), it is noteworthy that URA already made two MAP claims as a result of their assessments.** Picciotto (2016) noted that both involved telecommunications companies but that the details could not be verified. The first MAP claim appears to have been made in South Africa by MTN, due to disallowance by the URA of management fees paid to an affiliate formed in Mauritius but claiming residence in South Africa. The second claim resulted from the application of capital gains taxes to the acquisition of Zain by Bharti Airtel through Dutch conduit companies using the DTT with the Netherlands, as discussed above. The Uganda High Court decided in

[53] MFPED (2019), Domestic Resource Mobilisation Strategy, pp. 61-62
[54] MFPED (2019), Domestic Resource Mobilisation Strategy, pp. 61-62

September 2014 that Uganda had jurisdiction to tax the transaction. While the issue is still under consideration by the URA, Bharti has brought a MAP claim in the Netherlands, where the share transfer took place.

**If an MAP claim has not been resolved within two years, Uganda's 2004 DTT with the Netherlands provides for arbitration at the request of either tax authority**. The MTN dispute involves USD 200 million, and that with Zain USD 85 million - considerable sums, especially for a developing country. The similarly high-profile conflicts involving Uganda and oil firms Tullow and Heritage did not result in MAP claims, since the transfers took place in countries without tax treaties. However, claims were made under BITs (Finance Uncovered 2015; Mbanga 2015).

## 5.3 Uganda's position regarding the MLI

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

**Rather than signing the MLI, Uganda has thus far decided to renegotiate its DTTs on a bilateral basis.** Since Uganda did not decide to sign the MLI, it is not possible to analyse the formal position of Uganda on MLI provisions. It is therefore difficult to assess which MLI provisions would be implemented in Uganda's tax treaty model if it were to adopt the MLI.

**While we did not receive an official government position on the MLI, there are several reasons why Uganda may prefer to renegotiate DTTs on a bilateral basis.** First, Uganda has only ten DTTs in force, so it might consider bilateral renegotiation of DTTs more efficient than analysing and preparing a position on MLI, as far as capacity and administrative costs are concerned. Second, renegotiating DTTs bilaterally can give more flexibility: Uganda can introduce tailor-made solutions for each DTT and would not have to offer the same choices to all treaty partners, as it must do in the MLI. Third, it is possible that there is pressure from large foreign investors (who benefit from DTTs) not to sign the MLI. Nonetheless, there are also reasons why the adoption of MLI would be a more favorable solution for Uganda. The URA representative noted that URA prefers the MLI precisely because Uganda is not capable of negotiating on an equal footing with bilateral partners such as the Netherlands. The URA representative noted that he and others at URA prefer the MLI, because the Netherlands has "too much" capacity, experience and knowledge in this area. In his view, Uganda's only chance of getting a more favorable treaty is through the MLI. However, he noted that the MLI is not very high on the agenda right now, for unclear reasons. Within URA, there is hope that their new Commissioner General will be able to convince the Ministry of Finance to push for the MLI.

**According to NGOs, the MLI may not be fully in the interest of Uganda as it can also lead to more tax conflicts that Uganda is unlikely to win.** They noted that the design of the MLI as an "à-la-carte menu" allows each country to pick some provisions and discard others. In their view, this may lead to more tax conflicts and arbitration, with developing countries like Uganda typically not in a position to hold the other country responsible.

## 5.4 Uganda's DTT with the Netherlands

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

**On 31 August 2004, Uganda and the Netherlands signed the "Convention between the Kingdom of the Netherlands and the Republic of Uganda for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income".** The agreement (henceforth, '2004 DTT') was signed in The Hague and entered into force on 10 September 2006.[55]

**In comparison with other DTTs, the current DTT with the Netherlands is attractive for foreign investors while not seeming beneficial to Uganda**. In particular, the 2004 DTT includes three clauses that are particularly attractive to Dutch investors:

- The 2004 DTT includes a participation exemption for withholding taxes on dividends;
- The 2004 DTT does not expand the definition of royalties on leasing of equipment;
- The 2004 DTT contains no source taxation on fees for technical assistance.

**As Table 5.1 shows, the Uganda-Netherlands DTT offers substantial benefits to investors.**

- **Regarding interest payments**, Article 11(2) of the DTT states the following:
  - Interest payments made by a Ugandan company on loans granted (guaranteed) by the Dutch government or a Dutch financial institution are not taxed in Uganda (i.e., a full withholding tax exemption applies).
  - Interest payments made by a Ugandan company to any other Dutch entity are subject to a 10 percent withholding tax rate.
  - For comparison, if the same interest payment is made to an entity established in a country that does not have a DTT with Uganda, a 15 percent withholding tax rate applies.
- **Regarding dividend taxes**, Article 10(3) of the DTT establishes that the rate is either 0 percent or 5 percent, depending on the share that the Dutch company has in the capital of its Ugandan subsidiary:
  - For Dutch companies holding at least 50 percent of the capital of the Ugandan subsidiary (known as Participation Dividends), dividend payments are fully exempt from any amount of withholding taxes;
  - For Dutch companies holding less than 50 percent of the capital of the Ugandan subsidiary (known as Portfolio Dividends), dividend payments are taxed at the rate of 5 percent. As a result of Article 10, cross-border dividends paid out by a Ugandan resident company to a Dutch company will not be taxed in Uganda if the latter has 50 percent or more of control of the paying entity. If the same dividend payment were made from a Ugandan entity to a shareholder established in a third country that has no DTT with Uganda, the regular 15 percent withholding tax rate would be levied.[56]

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[55] According to some sources (e.g. Oxfam 2020), the DTT became in force only in 2017.

[56] See Oxfam (2020), pp. 11-12.

Table 5.1 The Uganda-Netherlands DTT offers substantially discounted tax rates

| | Uganda Tax Law | Uganda - Netherlands DTT |
|---|---|---|
| Interest Payments | 15% | 0% or 10% |
| Participation Dividend Payments (shares > 50%) | 15% | 0% |
| Portfolio Dividend Payments (shares < 50%) | 15% | 5% |

Source: Oxfam (2020) and SEO Amsterdam Economics, based on the Uganda-Netherlands 2004 DTT.

**It is likely that these aspects of the 2004 DTT have attracted the oil and telecoms multinationals described in Section 2 to use a conduit company in the Netherlands for their transactions**. According to Oxfam (2020), 95 percent of the Dutch investments in Uganda would have originated from a third country if it were not for this DTT. What makes the use of Dutch conduit companies particularly attractive to foreign investors is that (a) the participation exemption for withholding taxes on dividends prevents Uganda from taxing outbound dividends to the Netherlands, while (b) Dutch companies thus far also do not need to pay taxes in the Netherlands on dividends from subsidiaries. As a result, outbound dividends from Uganda are effectively untaxed.[57] As Action Aid (2016, p. 5) put it: "Uganda's tax deal with the Netherlands blocks Uganda from taxing income that investors bring home from Uganda and the income is routinely not taxed in the Netherlands either. These investors enjoy double non-taxation while Uganda misses out on vital tax contributions."

**The Dutch government recently took a number of measures to address double non-taxation and "curb the use of the Netherlands as a conduit country".**[58] From 2021, interest and royalties that meet specific conditions as provided by law, will be subject to a withholding tax. While this does not apply to dividends, the Dutch government also announced plans to introduce a new withholding tax in 2024 on outbound dividend flows to low tax jurisdictions. This new tax would enable the Netherlands to tax dividend payments to countries that levy little or no tax. The measure will apply to financial flows to jurisdictions that do not have a tax on profits with a statutory rate of at least 9 percent and to countries on the EU blacklist, even if the Netherlands has a tax treaty with them. Schenkel (2020a) refers to discussions on raising the rate on dividend flows of 'Dutch' companies in Uganda to 10 percent.

**An earlier analysis of the Uganda treaty network from the perspective of revenue mobilisation (Hearson and Kangave, 2016) confirms the findings above.** The authors conclude that none of the treaties concluded by Uganda met the standards set out in the UN model, and that there was "*a major problem with treaty shopping through the Dutch treaty, which should be the top priority for renegotiation. However, renegotiating priorities should not stop at treaty shopping. The weak permanent establishment provisions in Uganda's treaties mean there is a pool of inward investment of indeterminate size that Uganda cannot currently tax. Perhaps more significant is the major lack of source taxing rights over capital gains made by inward investors. The high-profile Zain and Heritage court cases indicate that Uganda wishes to tax capital*

57 PwC, Doing Business in the Netherlands 2020, pp. 20-29 https://www.pwc.nl/nl/tax/assets/documents/pwc-netherlands-publication-doing-business-2020.pdf

58 https://www.government.nl/latest/news/2020/05/29/government-to-step-up-fight-against-tax-avoidance-with-new-withholding-tax-on-dividend-flows

*gains when business interests in Uganda are sold on by overseas investors, but Uganda's treaties are not fit for this purpose*".

**As a result of the Dutch DTT, the URA has likely foregone substantial amounts in foregone revenues.** In 2016, researchers from the London School of Economics estimated the annual amount of revenue foregone as a result of the reduced withholding tax rate on dividend payments in the Netherlands at between USD 8 million and USD 24 million. According to Oxfam (2020, p. 12), those amounts are likely to have increased with the recent uptakes in Dutch FDI in Uganda and are likely to increase further with the expected start of oil operations by 2025. As Schenkel (2002b) notes, many of these investments would otherwise likely have taken place as well, given the attractiveness of the oil and telecoms sectors.

**The Netherlands offered Uganda already in 2013 to revise its existing DTT in accordance with BEPS, but renegotiations did not start until 2019.** In 2013, the Netherlands issued a letter to 23 developing countries, including Uganda, with an offer to revise existing DTTs in order to introduce an anti-avoidance provision in accordance with BEPS standards. However, as of 2014, Uganda temporarily suspended all tax treaty negotiations while they formulated a general tax treaty policy framework. In 2017, the Netherlands signed the MLI allowing BEPS related amendments to tax treaties with more than 100 countries without requiring the renegotiation of bilateral treaties. Since Uganda did not sign the MLI, however, the Netherlands announced in January 2018 that it would continue its bilateral discussions with Uganda.[59] However, these renegotiations did not start until September 2019.

**It appears that Ugandan CSOs played a role in restarting the negotiations between the Netherlands and Uganda in 2019.** In 2019, Uganda's CSOs followed up on the commitments that were made by the Government of Uganda during the launch of their Fair Tax Monitor.[60] They specifically inquired about Uganda's opportunity to enter into DTT re-negotiations with the Netherlands. While we could not ascertain the relative impact of CSOs in this regard, we know that, following the interaction, Uganda responded to the Dutch Ministry's request and both countries agreed to start initial discussions in Kampala, Uganda. On scheduling a meeting with the Government of Uganda, the Dutch Ministry of Finance offered the opportunity to dialogued with CSO members from Oxfam Uganda and Tax Justice Alliance Uganda (TJAU)[61] prior to the start of official renegotiations.

**On 25 September 2019, Oxfam Uganda and other TJAU CSO members held a policy dialogue with the Dutch envoys in Kampala on tax avoidance and evasion.** Here they presented a position paper arguing that Uganda should regain fundamental taxing rights and the amended DTT with the Netherlands should prevent tax evasion and profit shifting by corporations. In response, the Dutch Ministry of Finance confirmed the willingness of the Dutch government to negotiate a fair tax treaty with Uganda.

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59 https://www.taxews.com/news/Netherlands_Confirms_Tax_Treaty_Negotiation_Priorities_76329.html

60 https://maketaxfair.net/launch-of-the-fair-tax-monitor-in-uganda/

61 Tax Justice Alliance Uganda (TJAU) was established in 2014 following "the realisation that it was important for CSOs in Uganda to come together and deliberate on tax issues and pool human, financial and technological resources for common and/or joint action." Source: https://tjau.or.ug/

**In October and December 2019 the Netherlands proposed to start a second round of negotiations, but has not followed up since then.** It appears that no meeting has taken place since then and that no second round for these negotiations has been set. As of September 2020, Uganda was still mentioned as a country with which the Dutch Ministry of Finance planned to negotiate new or amended double tax treaties in 2020 but as yet, no date for the talks has been fixed according to the Ministry of Finance.[62]

[62] https://zoek.officielebekendmakingen.nl/blg-933296.pdf

# 6 Case study 4: IBFD Course on International Taxation

**In 2015 and 2016, the International Bureau for Fiscal Documentation (IBFD) conducted a course in Uganda on International Taxation.** The course consisted of two parts, conducted in September 2015 and July 2016 respectively. All but one of the 23 participants worked at the Uganda Revenue Authority (URA) at the time.

## 6.1 Relevance

### Objective

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

**The main objective of the course was to raise awareness and improve participants' knowledge of international taxation issues, including double tax treaties and BEPS actions.** The formal objective was to "provide solid grounding in the key international tax principles relevant for building and maintaining a robust international tax policy and a tax treaty network that serves Uganda's specific requirements".[63] The first part of the course covered nine thematic areas, ranging from basic principles of international tax law and treaties; to permanent establishment concept; and tax treaties, tax planning and tax avoidance. The second part covered fourteen thematic areas and focused on "income from investments (i.e. passive income)."[64] Examples of topics included the beneficial ownership concept and treaty shopping; BEPS Action Plan proposals to prevent treaty shopping; tax treaty negotiations and national treaty model. IBFD also granted the training participants two-year access to its "Global Tax Explorer", an online database of tax resource material.

### Needs identification

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

**The idea for this activity came about during an IBFD seminar on tax treaty maintenance in Amsterdam in September 2014, in which four Uganda officials participated.**[65] This seminar was mandated by the Dutch Ministry of Foreign Affairs and, according to interviewees, was itself inspired by three factors: (1) the launch of the BEPS project; (2) political debates and demands in the Netherlands to renegotiate tax treaties that are unfavourable for African countries; and (3) an earlier IBFD 'white paper' that had found that African countries enter double taxation agreements but hardly maintain them.[66]

[63] IBFD training evaluation report "IBFD Training Program for the Ugandan Revenue Authority International Taxation: Principles and Application in the Ugandan Context, Part I: 28 September 2015 to 2 October 2015" (IBFD, 2015b).

[64] IBFD training evaluation report (IBFD, 2015c)

[65] Training on Maintaining Tax Treaties, Amsterdam, 29 September-3 October 2014.

[66] https://www.ibfd.org/IBFD-Tax-Portal/White-Papers

**The 2014 seminar in Amsterdam aimed to strengthen the capacity of tax authorities in the area of tax treaty management.** The seminar covered theories and practical application of the concepts and principles of international tax law, as well as their application in business structures.[67] Some 30 officials from Ethiopia, Ghana, Kenya, Malawi, Rwanda, Tanzania, Zambia, and Zimbabwe attended the seminar in Amsterdam, including 4 delegates from Uganda. At the fringes of the seminar and in bilateral meetings, the country representatives expressed their general and perceived needs for additional capacity building support from IBFD.

**The International Taxation course content was fine-tuned and operationalised in an iterative and consultative process to maximise the training's relevance for the Ugandan participants.** In the preparatory phase, IBFD's Government Consultancy Department liaised with a contact person at the URA to determine the seminar's objective, its content, structure and duration as well as organisational issues, including the venue and the coverage of participants' expenses. The process was meant to ensure that the seminar addresses the needs of the participants (and the institutions they represent). From this perspective it can be concluded that the seminar content was largely driven by the demands of the Ugandan authorities and that IBFD's team used its expertise to operationalise these demands into a useful programme. Our interviewees also commonly confirmed that the process in Uganda reflected IBFD's "usual practice" and that it mirrored the organisation's ambition to be an impartial and neutral think tank on tax matters.[68]

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

**In addition to the capacity building request from the Uganda Revenue Authority (URA), other reasons suggest that the course was relevant to the URA at the time.** In September 2014, the Court of Appeals in Uganda ruled in favour of the URA in the "Zain case" (described in Chapter 1). It confirmed the URA's jurisdiction to assess and tax the offshore seller of an indirect interest in local assets, overturning the decision of the High Court in Kampala in favour of Zain International BV. Furthermore, around the time of the course, there was an ongoing debate about "beneficial clauses" which eventually resulted in revisions of Uganda's tax code. According to our interviewees, IBFD was able to integrate these developments into the course programme.

**Information that we collected suggests that there were no similar interventions by other development partners at the time.** While this cannot be confirmed, we conclude that the capacity building events addressed questions that were relevant for the Ugandan authorities at the time. Even if there had been similar interventions, they were likely not of the same scale in terms of duration and participation. IBFD explained to have undertaken efforts to avoid overlap and to ensure that their capacity building events are complementary to those of other bi- or multilateral organisations. These efforts included repeatedly asking the Ugandan counterparts about similar interventions; to reconfirm complementarity during the design process; to liaise with and enquire about the interventions of other organisations when opportunities arose (e.g. during meetings or conferences). While interventions of other parties are not always known to all, the IBFB argued to have made a reasonable effort to map the interventions of others. Also, the IBFD explained that,

[67] IBFD Press Release, 23 September 2014; see also https://www.taxcompact.net/sites/default/files/resources/2014-12-ITC-Newsletter.pdf

[68] With a view to substantiating their view that IBFD operates on a "demand-driven" bases, interviewees also stated that IBFD never depleted the funding that had been granted by the Dutch Ministry of Foreign Affairs – which would presumably not have been the case had IBFD used a "supply-driven" approach.

ultimately, the task of donor coordination lies at the CD-receiving countries however. We conclude that these explanations were plausible and the efforts reasonable.[69]

## 6.2 Effectiveness

### Effect on the capacity of authorities

**Both parts of the course were consistently rated positively by both participants and course providers in terms of improving knowledge on international taxation issues.** In course evaluations, more than 90 percent of the participants stated that their learning objectives were met and that they were satisfied with the course content and materials, as well as the experts who facilitated the courses. The latter agree that the courses were effective in achieving the (short-term) objective to increase the technical knowledge of participants, including the interplay of domestic law and international tax treaty issues.

**Interviews suggest there were positive learning effects, namely that participants in the second part of the course were able to leverage the knowledge they gained in the first part.** IBFD experts specifically noted that quality of the discussions improved in the second part of the course. They noted that participants asked specific questions, for example about withholding tax implementation, taxation of immovable property, and about the approaches of other revenue authorities – all indicating an interest to apply the course content to practice. Interviewees also noted that, after the course, participants sent emails to IBFD asking for ad hoc advice or for information on issues such as franchise agreements or royalties.

**It is unclear to what extent the improvement in knowledge and capacity has had long-term effects.** We were informed that in recent years, the URA has undergone a significant reorganisation and that key tax officials have been replaced or transferred. Turnover of staff is typically not conducive to ensuring longer-term effects of capacity building activities. It should also be noted that we would not expect a two-week training programme to completely change the way treaty negotiators conduct negotiations, especially if the treaty partner continues to have greater capacity and knowledge of DTTs and other aspects of international taxation (which is generally the case when the treaty partner is a developed country). Similarly, the training programme can definitely add to the understanding, willingness and ability to apply anti-abuse clauses, but it is unlikely to have major effects in this area.

**With hindsight, the course may have been more effective if it had also invited relevant representatives from the Ministry of Finance, Planning, and Economic Development (MFPED) involved in international tax policy and treaty negotiations.** Some interviewees noted that "a wider range of institutions beyond the Ugandan Revenue Authority" would have been preferable. Such broader participation was reportedly suggested by IBFD during the course preparatory phase, but this suggestion was not taken up for unclear reasons.[70] This can be seen as

[69] In the evaluation report of the first seminar, IBFD expressly invited the URA to inform them about other capacity building interventions ("in order to avoid the duplications - on the assessment of training activities enrolled by other donors …"). (IBFD, 2015c)

[70] As a possible explanation, one expert familiar with Ugandan politics noted that there had been a "difficult relationship between URA and the Ministry."

a lost opportunity, given that the MFPED has responsibility for treaty negotiations, and appears to have different views than the URA (for example, as noted in Case Study 2, URA officials are now in favour of signing the MLI while the Ministry is reluctant to do so). Moreover, in its recently concluded five-year Domestic Revenue Mobilisation Strategy (DRMS), the MFPED itself highlights capacity constraints in the area of tax policy. In particular, it notes that its Tax Policy Department (TPD), whose responsibility includes the negotiation of DTTs, "currently faces several challenges which has limited the department's ability to undertake thorough analysis of policy options, conduct wide high-level consultations with public and private groups, develop well-targeted proposals, and participate in treaty negotiations." The DRMS therefore concludes that "there is a need to lift the capacity of the unit." (p. 49).

## Effects on BEPS actions and tax treaty negotiations

*RQ 6.1: To what extent did TA and training activities contribute to implementation of BEPS-actions in Uganda?*
*RQ 6.2: To what extent did TA and training activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between Uganda and the Netherlands?*

**The course was effective in raising awareness and improving URA participants' knowledge of BEPS and tax treaty issues**. According to interviewees, the course widely discussed BEPS actions, relevant developments in UN and OECD, and specific DTT issues relevant to Uganda.

**Some of URA's key objectives were met, i.e., to obtain guidance on how to resolve some of its challenges.** The course reportedly was helpful regarding potential revisions of the benefit clauses and to resolve issues related to transfer pricing audits. One example was a discussion on the beneficial ownership concept, the OECD commentary which had been amended in 2014, which was something the Ugandan representatives were not aware of at the time of the course.[71]

**IBFD was careful not to provide specific recommendations on BEPS issues to the Ugandan authorities.** While IBFD discussed some recommendations resulting from BEPS, IBFD trainers said they did not give specific recommendations, as this is not in the mandate of IBFD as a neutral think tank. During the training, IBFD provides insight on various options and emphasises that Uganda must decide which option they prefer. According to IBFD, it is up to the Ugandan authorities how to consider and act upon the course content. However, IBFD trainers did discuss a number of issues that they felt were useful to the authorities. IBFD also discussed why some reforms were made, and whether and how they could be beneficial for Uganda. An example was a discussion about case law (Canada, Velcro case) which according to IBFD was "enlightening" for the authorities.

**It is unclear to what extent this course had any impact on Uganda's tax treaty policy.** Interviewers were not able to assess this impact, mainly due to the small number of agreements negotiated in recent years. It is also not clear whether this course had any impact on Uganda's decision to suspend bilateral tax treaties negotiations for many years (while also not signing the MLI). One reason why it may not have had much impact, as noted above, is that the course

[71] It was also noted that URA picked beneficial owner concept to domestic law which was very restrictive and which may not be beneficial for URA in the context of DTTs.

participants were almost exclusively from URA and not from the Ministry of Finance (MFPED). Moreover, the Netherlands was not consulted by the authorities when the DRMS was drafted, while many other development partners did provide input.[72]

**It is unlikely that this course had a specific impact on Uganda's tax treaty negotiations with the Netherlands.** As described in Chapter 5, it was not until September 2019 when Uganda and the Netherlands reopened discussions to amend their DTT. Since this was more than three years after the second part of this IBFD course, it is unlikely that this course had much impact on these negotiations. Moreover, the renegotiations thus far appear to have been limited to one meeting in September 2019 (see Case Study 2).

[72] Uganda's Domestic Resource Mobilisation Strategy, which dates from October 2019, states that it was developed over a period of several years by the MFPED and URA in collaboration with the World Bank, the IMF, UK-DFID, USAID, the EU delegation, KfW, UNDP, EPRC, and the IGC, as well as representatives of civil society through the Tax Justice Alliance. As part of the DRMS process, a significant number of diagnostic studies were produced, virtually all by the IMF and the World Bank. (listed on p.32).

# 7 Case study 5: IBFD Seminar on Offshore Entities

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

## 7.1 Relevance

### Objective

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

**The objective of the seminar was "to share … insights on the current discussions around the use of offshore companies and other entities in light of global developments on exchange of information (on demand and automatic) and other strategies that administrations may adopt".**[73] The content of the seminar was intended for officials who routinely deal with offshore entities (e.g. auditors) as well as policy makers and treaty negotiators. According to interviewees, the seminar specifically aimed to encourage participating tax officers to gain confidence ("to be less shy"), to not take information received from taxpayers for granted, but to ask critical questions and make use of all available tools and instruments, including mutual assistance agreements.

### Needs identification

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

**The seminar resulted from feedback and experience that IBFD gained from different capacity building events in 2015-2016 that suggested "tax planning schemes pose serious detection and taxation problems" for tax authorities.**[74] The interviewees also mentioned other issues that informed the seminar, namely (i) a 2013 research paper by Action Aid concluded that as a result of capacity constraints many tax authorities in African countries often neither applied their tax avoidance rules at the domestic level nor respective treaty provisions;[75] (ii) political developments in the Netherlands against abusive conduct by offshore entities; and (iii) an earlier IBFD event on tax planning issues.

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

74 IBFD

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

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

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

## 7.2 Effectiveness[76]

### Effect on the capacity of authorities

**IBFD facilitators were of the opinion that the seminar reached its objective of "sharing insights".** They also stated that the course set-up was very effective to translate theory into practice.[77] Participants rated the seminar very positively on all four evaluation dimensions that were asked in the post-seminar evaluation form. Some participants asked for a longer seminar to also cover additional topics such as transfer pricing.

**While difficult to assess, the likely impact on improving participant's capacity was good.** Based on interviews, it appears that most seminar participants had little or no knowledge of aggressive international tax planning prior to the seminar. According to IBFD, the seminar led to improved awareness and knowledge of all these issues (in particular, using offshore entities for tax evasion and avoidance, hybrid entities, exchange of tax information). Moreover, the seminar also improved capacity in another way: according to one stakeholder, "tax officials in development countries are oftentimes timid; too afraid to ask questions." IBFD tried to actively encourage participation and taught participants that "the tax authority should not simply follow everything the taxpayer says." Similar to Case Study 4, there is little to substantiate the effectiveness of the training programme. However, we would not expect a one-week seminar to completely change the way treaty negotiators conduct negotiations, especially if the treaty partner continues to have greater capacity and knowledge of DTTs and other aspects of international taxation (which is generally the case when the treaty partner is a developed country). The seminar improved the understanding, willingness and ability to apply anti-abuse clauses, but it is unlikely to have major effects in this area.

**According to IBFD, the seminar also had policy-level effects.** It was "an eye opener" to participants that a mutual assistance agreement is a pathway to obtaining information for revenue authorities. IBFD believes that the seminar encouraged changes in domestic tax legislation, changes in DTTs, and potentially joining multilateral conventions. One indication is that Uganda (as well

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

[77] The seminar programme consisted of a theoretical part ("morning sessions") and a case study ("afternoon sessions"), including a field visit to a trust company in Amsterdam.

as Kenya) became a member of the Global Forum. While we do not have sufficient information to conclude that membership was a result of the seminar, one stakeholder noted that "The seminar showed the country's openness to "deal with the problems".

## Effect on tax treaty negotiations

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

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

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

## Effects on the application of anti-abuse clauses

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

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

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# Appendix A List of interviewees

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

| Name | Role and organisation |
| --- | --- |
| Khalid Amezoug | Tax policy advisor at the Dutch Ministry of Finance |
| Stephen Bayite | Policy Officer Agribusiness & Economic Diplomacy at The Embassy of the Kingdom of the Netherlands to Uganda |
| Ridha Hamzaoui | Regional Tax Manager for Africa and Middle East regions under the IBFD Africa, Middle East and Latin America Knowledge Group |
| Geert Holterman | Policy advisor at the Sustainable Economic Development Department of the Ministry of Foreign Affairs |
| Kristy Jonas | Tax policy advisor at the Dutch Ministry of Finance |
| Bart Kosters | Senior Principal Research Associate in International Bureau of Fiscal Documentation's (IBFD) Tax Services Department |
| Robert Luvuma | Manager International Taxation at the Ugandan Revenue Authority (URA) |
| Arnold Merkies | Coordinator of the Dutch branch of the Tax Justice Network |
| Geerten Michielse | Senior Economist (Tax Policy) at the Fiscal Affairs department of the IMF |
| Clara Mira | IMF Resident Representative Office in Uganda |
| Emily Muyaa | Managing Principal for Sub-Saharan Africa in the IBFD Africa and Middle East Department |
| Grace Namugambe | Programme Officer- Financing for Development/ Tax Justice - SEATINI-U |
| Regina Navuga | Programme officer SEATINI-U |
| Harry Roodbeen | Director International Tax and Consumer Tax at the Dutch Ministry of Finance |
| Robert Suuna | Head of tax analysis at Tax Justice Network (TJN) Africa |
| Gijs Verbraak | Senior Policy Advisor at ActionAid |
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Source: SEO Amsterdam Economics

# Appendix B BEPS actions[78]

- **Action 1 Tax Challenges Arising from Digitalisation**
  Addressing the tax challenges raised by digitalisation is currently the top priority for the OECD/G20 Inclusive Framework, and has been a key area of focus of the BEPS Project since its inception. This work has delivered several important outputs covering both direct and indirect tax issues.
- **Action 2 Neutralising the effects of hybrid mismatch arrangements**
  BEPS Action 2 called for the development of model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effects of hybrid instruments and entities. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 2 culminated in the 2015 OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements.
- **Action 3 Controlled Foreign Company**
  The Action 3 recommendations outline approaches to attribute certain categories of income of foreign companies to the shareholder(s) in order to counter offshore structures that shift income from the shareholder jurisdiction. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 3 culminated in the 2015 OECD report Designing Effective Controlled Foreign Company Rules
- **Action 4 Limitation on Interest Deductions**
  The Action 4 recommendations aim to limit base erosion through the use of interest expense to achieve excessive interest deductions or to finance the production of exempt or deferred income. The work by the Inclusive Framework member jurisdictions on Action 4 resulted in the 2015 OECD report Limiting Base Erosion Involving Interest Deductions and Other Financial Payments.
- **Action 5 Harmful tax practices (Minimum Standard)**
  The Action 5 Report is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review.
- **Action 6 Prevention of tax treaty abuse (Minimum Standard)**
  BEPS Action 6 addresses treaty shopping through new treaty provisions whose adoption forms part of a minimum standard that members of the BEPS Inclusive Framework have agreed to implement. It also includes specific rules and recommendations to address other forms of treaty abuse. Action 6 identifies tax policy considerations jurisdictions should address before deciding to enter into a tax agreement.
- **Action 7 Permanent establishment status**
  The work carried under BEPS Action 7 provides changes to the definition of permanent establishment in the OECD Model Tax Convention to address strategies used to avoid having a taxable presence in a jurisdiction under tax treaties.
- **Action 8-10 Transfer Pricing**

[78] http://www.oecd.org/tax/beps/beps-actions/

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

- **Action 8 – Intangibles**
  Action 8 addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting.
- **Action 9 - Risks & Capital**
  Work under Action 9 considers the contractual allocation of risks, and the resulting allocation of profits to these risks, which may not correspond with the activities actually carried out. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.
- **Action 10 - High-Risk Transactions**
  Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

- **Action 11 BEPS data analysis**
  The BEPS Action 11 report Measuring and Monitoring BEPS established methodologies to collect and analyse data on the economic and fiscal effects of tax avoidance behaviours and on the impact of measures proposed under the BEPS Project.
- **Action 12 Mandatory Disclosure Rules**
  BEPS Action 12 provides recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers.
- **Action 13 Country-by-Country Reporting (Minimum Standard)**
  Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.
- **Action 14 Mutual Agreement Procedure (Minimum Standard)**
  The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Inclusive Framework jurisdictions have committed to have their compliance with the minimum standard reviewed and monitored by its peers through a robust peer review process that seeks to increase efficiencies and improve the timeliness of the resolution of double taxation disputes.

- **Action 15 Multilateral Instrument**
  The Multilateral Instrument offers concrete solutions for governments to close loopholes in international tax treaties by transposing results from the BEPS Project into bilateral tax treaties worldwide. The MLI allows governments to implement agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies