



**TAX JUSTICE
NETWORK
AFRICA**

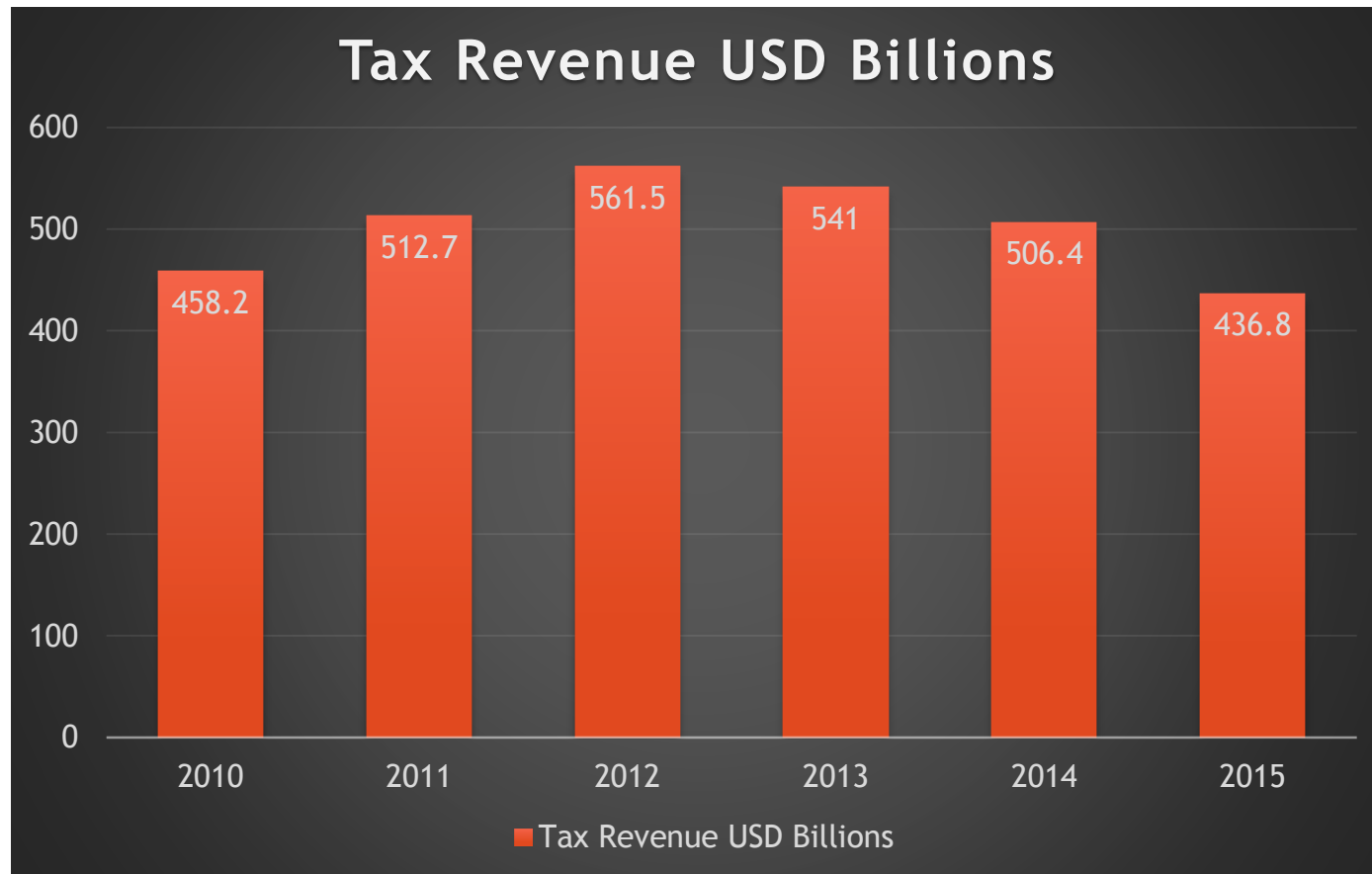
Nature of DTAs Signed by Africa

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Background & Introduction



Source: *Africa Economic Outlook 2017*

Why Tax Treaties

- ▶ Objective - eliminate the double taxation of income arising in one territory and paid to residents of another
- ▶ Tax treaties are geared towards splitting taxing rights between the contracting states
- ▶ Promoting investment - reduced/harmonised tax rates, non-discrimination articles and dispute resolution procedures, provides certainty on the taxation regime

Tax treaties and DRM

- ▶ DRM provides room for countries to operate sustainable budget expenditures, fosters ownership, reduces dependency on Aid
- ▶ Tax Revenue remains a critical component of DRM
- ▶ increase in levels of international trade, savings and investments have dominated the policy agenda
- ▶ DTTs are meant to increase foreign direct investments in developing countries
- ▶ FDIs influence the levels of savings and investment and eventually influencing the level of human development

Discussion

- ▶ Country A (located in country A) owns shares in B (located country B) A wants to invest in country C. They have approached a international tax consultant to provide an Opinion. A as indicated to be he may wish to invest directly or through any viable option. What do you think will the tax consultant look at in providing an opinion?

Discussion

- ▶ Upon review the consultant notes the following :
 - ▶ C has a tax treaty with country D and E. In the treaty with country D there is no limitation of benefit rule, WHT tax on interest & dividends is 10%, while that with E there is limitation of Benefit rule clause , WHT on interest is 15% and that of dividends is 10%. Further from the DTAs it is noted there is no WHT on technical fees for country D.

Note: A does not have operations in D and E, B has treaty with both D& E


Source vs Resident

- ▶ International Taxation Complexity
- ▶ Double taxation and issues of source and residence
- ▶ non-residents and residents - How do we domestically distinguish these two terms
- ▶ Mandate to tax is about power, and how the powers are distributed
- ▶ Points to note:
 - ▶ Income itself does not have a geographical location, what is looked at are the assets and activities
 - ▶ What happens where assets are located in more than one country? Which asset will you deem to be the generating a given stream of income?

Case laws on Abuse of DTAs

Heritage Oil & Gas Ltd Vs Uganda Revenue Authority (Civil Appeal No 14 Of 2011) ((Civil Appeal No 14 Of 2011)) [2011] UGCOMMC 97 (12 September 2011);

Search Summary:

Download:  commercial-court-2011-97.rtf

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
CIVIL APPEAL NO. 14 OF 2011
HERITAGE OIL & GAS LIMITED::::::::::::::::::::::::::APPELLANT
VERSUS
UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::RESPONDENT**

Developments in Kenya

NEWS

KRA suffers hit as consumers spared bottled water tax

TUESDAY, MARCH 13, 2018 7:00

High court suspends excise stamp duty on soft drinks

October 30, 2017

8 SHARES |      



KRA bid to impose excise tax on soft drinks, cosmetics unconstitutional – court rules

Yesterday

479 SHARES |      

By CORRESPONDENT,



Kenya Developments

- ▶ DTA case, suspend the entry into force of the DTA
- ▶ Thin line between bilateral agreement and tax treaty - Vienna Conventions
- ▶ Something that changes tax law .
- ▶ Various studies on DTAs
 - ▶ Tax Drainage-Kenya/Mauritius DTA and its potential impact on tax base erosion in Kenya
 - ▶ Tax treaties in Sub-Saharan Africa- Critical Review,

Some of the Recent developments

OECD model tax treaty shouldn't guide EU law on beneficial ownership, Advocate General says

🕒 March 7, 2018 📁 Europe, European Court of Justice, Featured News

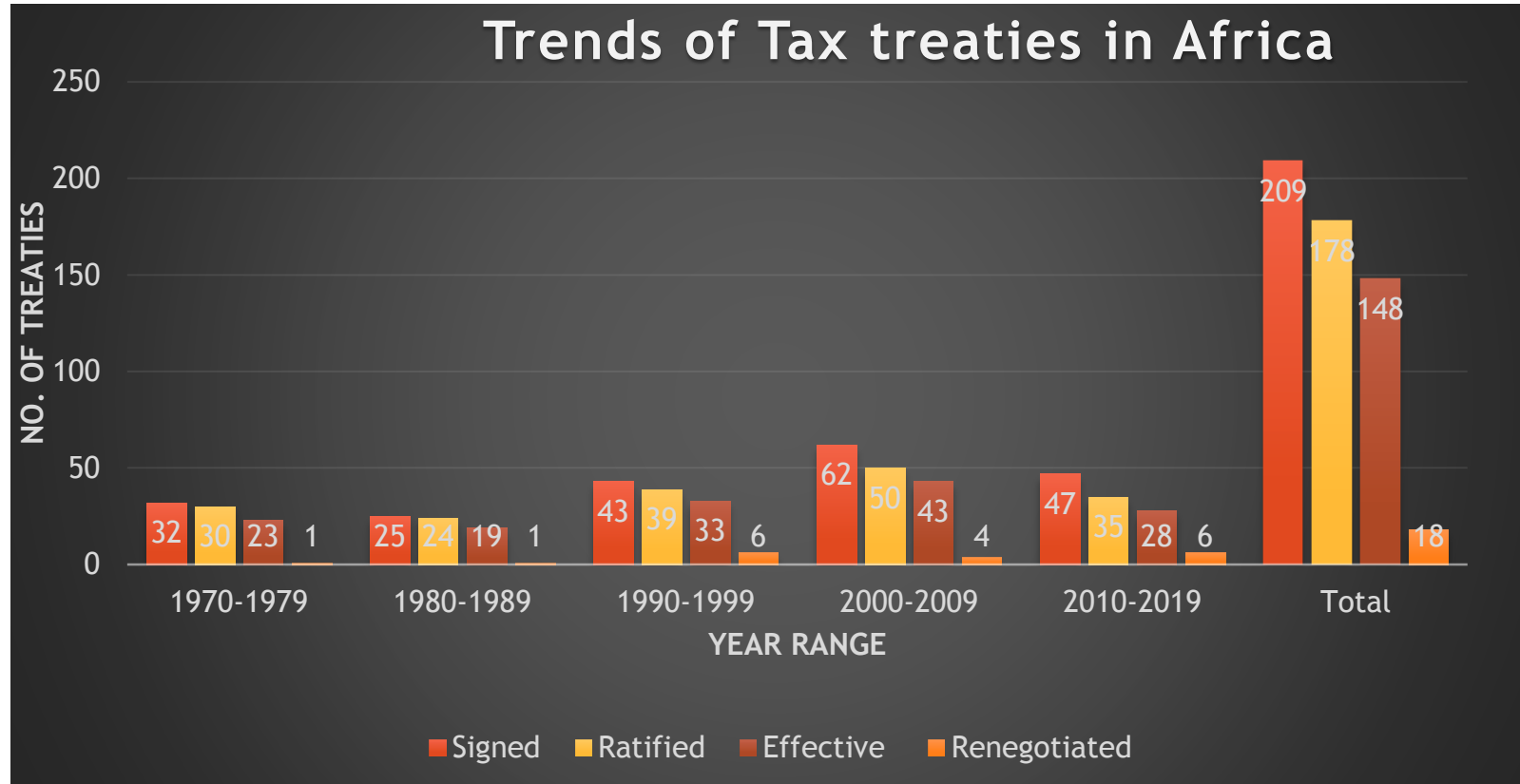
Nigeria signs both the Multilateral BEPS Convention and the CRS Multilateral Competent Authority Agreement to tackle international tax avoidance and evasion

17/08/2017 – Today at the OECD Headquarters in Paris, Tunde Fowler, Executive Chairman, Federal Inland Revenue Service of Nigeria, signed two major multilateral instruments in the presence of Ben Dickinson, Head of Global Relations & Development Division of the OECD: the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#) (the MLI) and the [CRS Multilateral Competent Authority Agreement](#) (the CRS MCAA). Nigeria becomes the 71st jurisdiction to sign the MLI and the 94th jurisdiction to join the CRS MCAA.

The MLI is a legal instrument designed to prevent base erosion and profit shifting (BEPS) by multinational enterprises. It allows jurisdictions to transpose results from the [OECD/G20 BEPS Project](#), including minimum standards to implement in tax treaties to prevent treaty abuse and "treaty shopping", into their existing networks of bilateral tax treaties in a quick and efficient manner. The text of the MLI, the explanatory statement and background information are available [here](#), along with the list of the 71 jurisdictions participating in the MLI and the position of each signatory under the MLI.



Tax treaties trends



Source : <http://ictd.ac/datasets/action-aid-tax-treaties-datasets>

Issues with Treaties in Africa

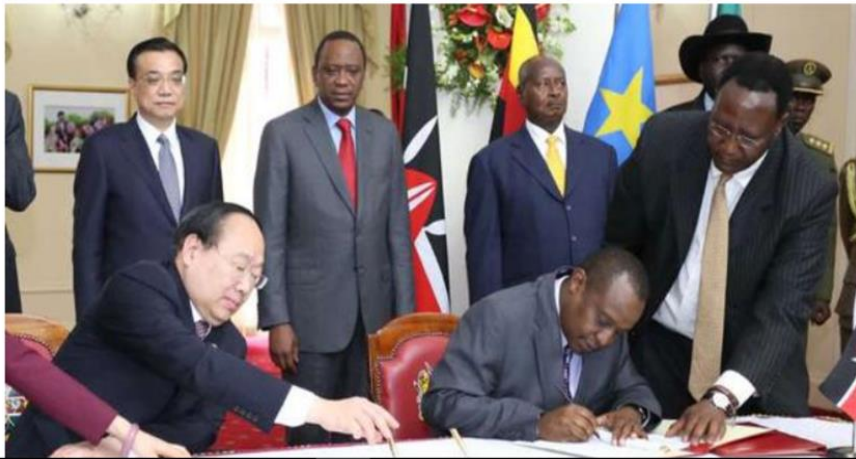
- ▶ Most outdated- Predate the existing economic reforms
- ▶ Most of them are unnecessary-
- ▶ Most DTAs have been developed on basis of either OECD or UN Models
- ▶ Tax treaties and politics -interests

1. ZAMBIA – 27.8.1968 Legal Notice No. 10/1970
2. NORWAY – 13.12.1972 Legal Notice No. 6/1973(pdf)
3. DENMARK – 13.12.1972 Legal Notice No. 5/1973(pdf)
4. SWEDEN – 28.6.1973 Legal Notice No. 14/1973
5. U.K – 31.7.1973 Legal Notice No. 253/1977
6. GERMANY – 17.5.1977 Legal Notice No. 20/1980(pdf)
7. CANADA – 27.4.1983 Legal Notice No. 111/1987(pdf)
8. INDIA – 12.4.1985 Legal Notice No. 61/1989(pdf)

Politics and DTAs

KRA says Kenya risks losing billions in China tax agreement

SUNDAY DECEMBER 3 2017



Kenya revises double taxation agreement to attract investors

SATURDAY JULY 23 2016



What ought to be done

- ▶ through carrying out honest and transparent engagements with the affected international parties - international tax issues are dynamic and complex.
- ▶ To guard against abuse of administration of tax laws and legislation processes - Limit discretionary legislations
- ▶ Treaty Negotiation- Capacity, harmonised Model
- ▶ Limitation of Benefit Rule Article, this is critical to safeguard against treaty shopping instances
- ▶ Use of General Anti-Abuse Rules - to curb tax avoidance schemes
- ▶ **Research based advocacy..**

Thank You.

Questions?



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