



SKILLS DEVELOPMENT TO TRACK, STOP AND RETRIEVE ILLICIT FINANCIAL FLOWS FROM AFRICA:

DIALOGUE WITH AFRICAN PARLIAMENTARIANS

Concept Note

1. INTRODUCTION

In 2012, ECA and the African Union Commission set up the High-Level Panel (HLP) on Illicit Financial Flows from Africa, chaired by former South African President, Mr Thabo Mbeki. In addition, the ECA commissioned background studies on the status of illicit financial flows (IFFs) in Africa and created the advocacy slogan: “IFF: Track it; Stop it; Get it” in support of the work of the Panel.

The HLP presented its progress report to the Seventh Joint Annual Meeting of the ECA Conference of African Ministers of Finance, Planning and Economic Development and the AU Conference of Ministers of Economy and Finance in March 2014. The report of the High-Level Panel on Illicit Financial Flows highlighted that similar to global rankings, in Africa, commercial IFFs are the largest, followed by criminal flows, and outright bribery and theft by government officials are the smallest in terms of the three sources of cross-border illicit financial flows.

By many accounts; about \$50 billion is taken away from Africa yearly due to trade mispricing. (Estimates by the ECA place this figure at \$60 billion based on a different data set and approach). These constitute funds that would otherwise be used for development. Besides, African gross domestic product would be at least 16 per cent higher were it not for illicit financial outflow, based on conservative estimates. The report also indicates that the estimates of illicit financial outflows do not take account of the increasing importance of services and intangibles such as intellectual property rights in global economic activity, which requires continued innovation to curb their IFF potential. Importantly, the Panel revealed that in reality, Africa is a net creditor to the world rather than a net debtor as is often assumed. The amount of ODA received by African countries is disturbingly lower than the amount of illicit financial outflows, hence the need to stem IFF.

Key findings of the report underscore that:

- **Commercial activities are by far the largest contributor to illicit financial flows (IFFs)**, followed by organized crime, then public sector activities. Corrupt practices play a key role in facilitating these outflows.
- **Mispricing of imports and exports is a source of more outright illicit financial flows** as is the under-declaration of quantities of oil, gas, minerals and natural resources (including timber and fish)
- **Financial secrecy jurisdictions must come under closer scrutiny.** In addition, activities and practices of low tax jurisdictions and financial secrecy jurisdictions are considered cross-cutting issues in addressing illicit financial flows and raise concern over some African

countries' preference to offer low taxes and financial secrecy. (and implicitly money laundering ones) due to perceived benefits.

2. CONTEXT AND JUSTIFICATION

Illicit Financial Flows from Africa are large and increasing. Since they constitute a substantive drain on the domestic resources of Africa which could otherwise assist in the continent's structural transformation; it is crucial to assist African countries to develop the capacity to track, stop and return them.

Members of Parliament are an essential stakeholder in holding the executive accountable. They are also responsible to ensure legislative framework support equitable, accountable and transparent tax systems. Such laws are important as a basis for effective and efficient domestic resource mobilisation. It has been affirmed that weak legislation, regulations and lack of transparency posed a risk to governments' domestic resource mobilisation efforts. As a result of weak and or outdated laws and regulations many countries tax bases are being eroded through harmful tax incentives and tax treaties. The biggest cross-cutting challenge found through country case studies is the lack of appropriate capacity (weak institutional and regulatory capacity) to ensure that illicit outflows are curtailed.

In light of the foregoing, and given that IFF constitute a substantive loss of domestic resources that can assist in the continent's structural transformation, the African Capacity Building Foundation (ACBF), the African Tax Administration Forum (ATAF), the Tax Justice Network Africa (TJN-A), the Pan African Lawyers Union (PALU) and the United Nations Economic Commission for Africa (UNECA) are organising a skills development workshop in the form of a dialogue with members of parliament from Africa on IFFs.

3. OBJECTIVES OF THE DIALOGUE

Illicit Financial Flows occur on a wide spectrum and thus are not limited to one type of transaction. It is essential to develop the building blocks of understanding the use of key legislation, and regulations that limit the opportunities for IFFs. Therefore, the objectives of the dialogue are as follows:

- To bring to the attention of members of parliament the various risks to tax bases that are lodged in weak legislation, outdated regulations and the lack of innovative measures to combat IFFs.

- To sensitize members of parliament to the various loopholes present in African countries that allow companies and individuals to strip out profits and assets offshore
- To discuss a range of real-life cases that illustrate IFFs and solutions available to prevent IFFs.
- To inform members of parliament of the tools available to combat illicit financial flows and to encourage members of parliament to advocate for these products to be ratified in their parliaments

4. TARGET AUDIENCE

The dialogue is targeted at members of parliament of African countries. The primary target audience is those members who belong to budget, finance and public accounts committees. Members from justice and trade committees will also benefit from the dialogue and its range of cross-cutting issues. Lastly, members belonging to regional parliamentary groupings are welcomed to attend the dialogue. The dialogue is aimed at 40 members of parliament from across the continent and will be conducted in English, French and Portuguese.

5. STRUCTURE OF THE DIALOGUE

It is envisaged that the dialogue will allow members of parliament to actively engage in the discussion by reviewing case studies that are prevalent in African countries. A subject matter will be presented by giving the key aspects that illustrate IFFs. Thereafter, a moderator will give details of the subject-matter related to a real-life case. Members will then deliberate on what tools, products and regulations are available to them to prevent IFFs in that particular case. After deliberations, the group will reflect on missed opportunities and areas where new laws could be passed to prevent IFFs. Each session will be moderated or presented by one of the partner institutions using a base document for the case study. Some sessions will be co-facilitated and there will be present experts in various cases to assist with some of the technical discussions that may arise.

6. SPECIFIC AREAS OF FOCUS

The dialogue will focus on three key areas based on the HLP Report recommendations these are outlined below:

6.1 Transparency: Granting of Tax Incentives – The report recommends that regional integration arrangements should be used to introduce accepted standards for tax incentives to prevent harmful tax competition in the effort to attract foreign direct investment. There is a clear need to

undertake cost-benefit analysis before granting tax incentives especially tax holidays intended to attract FDI but which have a lost revenue cost.

6.2 Double non-Taxation Agreement Issues – The report recommends that African countries review their current and prospective double taxation conventions, particularly those in place with jurisdictions that are significant destinations of IFFs, to ensure that they do not provide opportunities for abuse. The use of the model developed by ATAF is recommended for consideration.

6.3 Aggressive corporate behaviour: Transfer pricing and other Base Erosion and Profit Shifting (BEPS) – The report recommends that African countries should establish transfer pricing units as a matter of extreme urgency. These units should be appropriately situated in revenue authorities and should be well equipped in accordance with global best practices.

7. DOCUMENTS/MATERIALS FOR BASIS OF THE DIALOGUE

The following documents will be essential to inform the target audience of the subject matter:

- High-Level Panel Report on Combatting illicit Financial Flows
- Project outline on Implementing the Recommendations of the HLP Report
- African Agreement on Mutual Assistance in Tax Matters
- ATAF Double Non-Taxation Agreement
- ATAF Suggested Approach to Drafting transfer Pricing Legislation

8. EXPECTED OUTCOMES

It is envisaged that after a two-day interaction of in-depth analysis of the key areas through case studies will provide parliamentarians with the following:

- **Enhanced awareness and capacity** (competency, skills and knowledge) of members of parliament and other stakeholders to better address among others curtailment of mispricing in trade imports and exports, country-by-country accounts of sales, profits and taxes paid by multinational corporations, declaration of beneficial ownership in commercial entities, automatic cross-border exchange of tax information, and harmonisation of laws relating to anti-money laundering.
- **Enhanced capacities for prevention, detection, deterrence** of illicit financial flows through recognising faulty regulations and legislation.

- **Holding the executive accountable** for the actions taken or not taken in the prevention of combatting of IFFs.
- **Extending the dialogue to additional years** to cover other areas that are key in fighting in illicit financial flows in Africa.

9. DATES AND VENUE

The dialogue will take place during the same week at the 6th Pan African Conference. The dialogue is slated to take place from 9 – 10 October 2017 in Nairobi, Kenya.

10. PARTNER ORGANISATIONS

The Consortium on Illicit Financial Flows formed in Accra, Ghana in November 2015 is tasked with implementing the HLP Report’s recommendations. The Consortium consists of 14 Organisations each with two representatives on the Illicit Financial Flows Working Group (IWG) which reports to the Consortium. This dialogue is a joint activity of four members of the Consortium which are:

- African Capacity Building Foundation (ACBF)
- African Tax Administration Forum (ATAF)
- Tax Justice Network Africa (TJN-A)
- Pan African Lawyers Union (PALU)
- United Nations Economic Commission for Africa(UNECA)

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