



WEST AFRICAN UNION OF TAX INSTITUTES (WAUTI)

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THE END OF HER 5TH ANNUAL TAX CONFERENCE HELD AT NAF CONFERENCE
CENTRE AND SUITES, ABUJA, NIGERIA**

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Preamble

Illicit fund flows (IFFs) out of Africa has left the African continent pulverized, economically, and further undermined Institutions of government. The economies of African Countries are unable to grow as these illicit flows stymie investments, drain foreign currency reserves, heighten inflation, undermine trade, exacerbate poverty and widen income gaps. It also denies African governments the vital tax revenue needed for the provision of economic and social infrastructure for the wellbeing of Citizens.

Sub-Saharan Africa is reported to have lost \$528.9 billion from IFF outflows while it received almost as much in Official Development Assistance and Foreign Direct Investment inflows at a combined sum of \$596.3 billion from 2003–2012 from foreign Countries that may ultimately have benefited from such IFF outflows from Africa, in the first place. Sub-Saharan Africa also accounted for 8% of cumulative IFFs from the developing world, between 2003-2012, while its contribution to world Gross Domestic Product stood at 2%. Africa loses about 5% of her Gross Domestic Product to IFF which is larger than the manufacturing sector in Sub-Saharan Africa put together.

The impacts and missed opportunities for development of the African continent as a direct consequence from IFF makes the urgent case for its discussion as the continent faces a real and present danger and existential threat arising from IFF.

Illicit Financial Flows may simply be defined as *money illegally earned, transferred or used*. These monies are illicit because they are a result of the proceeds of unacceptable ways of behaviour by individuals and Companies engaged in international trade through trade mis-pricing and commercial mis-invoicing for tax purposes. Other illicit flows include laundering proceeds of crime and trafficking. Trade mis-pricing and commercial mis-invoicing alone constitutes about 65% of Illicit flows leaving the African continent while proceeds of crime, trafficking takes up 35% and corruption accounting for 3%.

The Conference

The 5th West African Union of Tax Institutes Conference therefore set out to ideate in and around finding the nexus between Base Erosion, Profit Shifting and Illicit Fund Flows, the problems, forms, causes, its resolution and action plans. The conference considers the action plans as outlined by Organisation of Economic Cooperation and Development (OECD) and West Africa's response therefrom.

During the Conference, 6 papers were presented including the lead paper vis:

- Relevance of Base Erosion and Profit Shifting (BEPS) to the Illicit Flow of Funds (IFFs) from Africa

➤ SUB-THEMES:

- ✓ The Action points under Base Erosion and Profit Shifting: How far have African States got involved
- ✓ The impact of Illicit Flow of Funds from Africa on the Economies of African States
- ✓ The role of tax compliance in addressing the illicit flow of funds from Africa
- ✓ Role of Double Taxation agreements in the regional integration of West African States
- ✓ The effect of Country-by-Country reporting of MNEs on transparency and tax administration in West Africa

The panellists and delegates at the conference dealt extensively at the immediate and remote causes of IFFs, its impact on Sub-Saharan Africa as well as the articulation of the OECD in this respect.

The Forms of IFF

The following were discussed and found to be forms of IFF outflows from Sub-Sahara Africa thus:

- **Laundering proceeds of crime,**
- **Abuse of power,**
- **Market/regulatory abuse; and**
- **Tax abuse,**

It is also worthy of note that IFF does not only relate to physical movement of cash and recruitment of suitably qualified persons who have no business in West Africa

The Enablers/ Drivers of IFFs

The enablers of IFF include:

- ✓ **Bad governance,**
- ✓ **weak institution,**
- ✓ **corruption,**
- ✓ **ADTAs,**
- ✓ **tax incentives and waivers, and**
- ✓ **secrecy and poor data quality**

Relevance to Africa

However, of concern to the Sub-Saharan continent are issues in and around trade mispricing i.e. **transfer pricing issues, unequal contracts, money laundering and Base Erosion and Profit Shifting (BEPS).**

For BEPS vis-à-vis the OECD action plans, in particular, Sub-Saharan Africa is required to pay attention to issues in and around:

- ✓ Interest deductibility on loans provided by parent companies of subsidiaries for which some African Countries negotiated Avoidance of Double Taxation Treaties without providing restrictions on intercompany loans,
- ✓ Harmful tax practices especially in the area of abuse of tax incentives in Africa,
- ✓ Artificial avoidance of Permanent Establishment Status leading to double non-taxation of companies by tax jurisdictions,
- ✓ Mandatory Disclosure rules aimed at tackling opacity of information which companies use to avoid or evade taxes,
- ✓ Transfer pricing documentation and Country by Country Reporting.

Resolution of the Issues

The conference rose from deliberations agreeing that the impact and magnitude of IFFs from Africa is greater than typically reported due to poor and huge black economy and equally outlined the following areas with a view to resolving most of the issues in and around the most significant component of IFF which also denies tax authorities effective tax revenue collections vis:

- ✓ Ideas need to be properly conceptualized to solve West Africa's problems,

- ✓ The conference realises the need for companies to make efficient choices in support of their international businesses but they should ensure at the same time that they are held accountable, report their incomes and pay their taxes,
- ✓ Government should not rely on the poor to fund the government but also on the rich,
- ✓ The work of the OECD on BEPS provides a platform for African countries to join the discussion and therefore mitigate the impact of IFFs from the continent with more holistic approach needed to fix the problem,
- ✓ There should be a domestic legal and administrative framework with respect to CbCR,
- ✓ More cooperation in terms of information sharing across ECOWAS countries should be encouraged,
- ✓ Government and its agencies should seize the initiative and always be ahead with respect to dynamics of transactions and tax schemes in the economy,
- ✓ Action is required by all Stakeholders to get the ideas and initiatives that have been discussed going,
- ✓ Issues around coordinating data quality and compilation in a coherent form and which should be actioned upon and not left lying around should be addressed,
- ✓ Those trained in treaty issues and negotiation should be brought on board when discussing treaty and attendance should not be based on cronyism,
- ✓ For aggressive tax planning to be checked, limitation of benefits can help,
- ✓ Tax incentives need to be ring fenced while conduit Financing Arrangement Rules should also be introduced,
- ✓ Tax treaties recognize the application of Domestic GAARs which is similar to the “Principal Purpose Test”,
- ✓ It is also recommended that tax treaties be amended to include the statement that tax treaties cannot be used to escape tax liability,

- ✓ Use of earnings (EBITA) threshold as suggested by OECD as against the thin capitalisation rule is canvassed,
- ✓ African Countries have not taken comprehensive steps in the area of legislation to implement the recommendations under the BEPS Action Plan,
- ✓ Africans should demand evidence of payment of taxes before representation and before being allowed to take part to vote in electoral processes.

Actions to be taken

- ✓ Governments of the West African region must muster the political will to come together and find sustainable solutions to the issues of IFF the same way they have always mustered the political will to come together to resolve political and economic impasse that could have gravely impacted the West African region
- ✓ Standing BEPS committee is canvassed for West Africa on OECD BEPS action plan, consider their recommendations for adaptation and use for enhancement of revenues for West African Countries,
- ✓ WAUTI, WATAF, ECOWAS to build joint taskforce of experts to negotiate favourable terms for West Africa,
- ✓ Legislations should not be left unchanged but reviewed from time to time to accommodate changing times,
- ✓ Countries need to amend their tax laws to accommodate the digital economy and not remain antagonistic towards same,
- ✓ Revenue authorities should avail themselves information provided by other sister government agencies in a spontaneous and retrievable manner and must process them to make them relevant for tax purpose,
- ✓ Checks on abuse of incentives should introduce an underlying ownership concept in order to check abuse of tax incentives especially in free trade zones,
- ✓ Conduit financing rules should be introduced to determine if the fund can be effectively utilised by subsidiary companies as well as the timing of provision of such funding

- ✓ Subsuming tax matters under Finance will not serve its purpose. The call is for Countries including Nigeria to do more and establish separate Taxation committees for this purpose,
- ✓ Networking for micro level discussions from the Conference has become necessary to take the discussion beyond the Conference,
- ✓ Networking among delegates should also facilitate solutions to problems across countries from peer consultations,
- ✓ Input of CITG, Ghana are always key to tax policy directions in Ghana and same should apply in other Countries of the region.



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