CAN TAX AVOIDANCE IN AFRICA BE AVOIDED?

By Norman Mugarura (Ph.D.)

The term "tax avoidance" refers to avoiding paying the right amount of taxes and in many countries, it is not a criminal offence. On the other hand, "tax evasion" is committed when a person uses forged or falsified documents such as falsified financial statements, salary certificates, and formal declarations on ownership of assets or other certificates that are generally accepted as valid proof of a certain fact to hoodwink tax authorities and as a result gain unfair advantage." Tax avoidance, unlike tax evasion, is legally committed when corporations or individuals take advantage of legal grey areas through the use of aggressive schemes to increase "tax efficiency." Tax avoidance is often committed by the rich or Multinational Corporations (MNCs) using tax experts such as lawyers and Accountants to avoid paying the right amount of taxes. The irony of it is that those who cannot afford to hire tax experts pay all their tax dues to tax authorities while the rich cheat the system by dodging taxes. Ironically also this means that the poor subsidize the rich instead of it being the other way round. The Asset recovery process is not only tedious and expensive for victim countries, there is also unwillingness of countries where assets have been secreted to release them. Also, Mutual Legal Assistance Treaties (MLAT) are not easy to use where evidence on stolen Assets has been destroyed, assets dissipated, or law enforcement agencies deficient in requisite capacity to initiate and execute the Asset recovery process.

According to Oxfam, Africa loses more than $50bn (£33bn) in tax avoidance from the world's poorest countries every year. The research carried out by African Union in 2001, found that illegal transfers from African countries have tripled since 2001, when $20bn was siphoned off to offshore financial centers (Global Financial Integrity Report). It is estimated that tax avoidance by corporations costs poor countries an estimated $160 billion a year (double what countries receive in international aid). The Money lost in tax avoidance is enough to meet the health bill and save the lives of 350,000 children aged five or under every year and to buy antiretroviral drugs for HIV/AIDS sufferers. For every $1 given in aid to a poor country, $10 drains out to off shore financial centers in stolen wealth. In total, African continent lost about $850bn between 1970 and 2008. An estimated $217.7bn was illegally siphoned out of Nigeria in the same period, while Egypt lost $105.2bn and South Africa has lost more than $81.8bn. Tax avoidance is often committed through trade mispricing, payments between parent companies and their subsidiaries, and profit-shifting mechanisms designed to hide revenues are all common practices by companies to maximize profits. Nigeria's crude oil exports, mineral production in the Democratic Republic of the Congo and South Africa, and timber sales from Liberia and Mozambique are all sectors where trade mispricing occurs more or less on a regular basis.

The AU report also noted that more than $1tn was stolen from African countries through illegal schemes between 2007 and 2009 amounting to 6% of global GDP. When illicit outflow of funds lost by African countries are aggregated, Africa becomes a net creditor to the world and not a net debtor as it is always portrayed. The OECD laments that tax avoidance, corruption, money laundering cost Africa a fortune and countries have been very slow at responding to these challenges. Oxfam also estimates that Africa loses half of the global

$100bn of annual illicit financial flows. The bulk of Africa's illicit transfers originated from West Africa, where 38% of all funds leaving the continent were generated. Profit-making activities in North Africa accounted for 28% of the flows, while southern Africa, central Africa and Eastern Africa each loses up about 10% to offshore financial centers. The term "Offshore Financial Centers (OFCs)" refers to "a small, low-tax jurisdiction specializing in providing corporate and commercial services to non-resident offshore companies, and for the investment of offshore funds." Smaller island economies are typically 'rented' out to foreign multinationals that are hypermobile in nature, able to switch jurisdictions easily if the government fails to comply.

Article 43 of United Nations Convention against Corruption (2003) obligates states parties to extend the widest co-operation possible to one another in investigation and prosecution of corruption related offences. The reality remains that there has been a discrepancy in the measures enacted to fight financial crimes both at an international and national level and their implementation by countries. Countries should step up efforts to harmonise their laws in all areas of shared interests including taxation and fighting crimes. Many regional markets such as the EAC and EU have realised the potential of harmonization to address limitations of unilateral state measures and utilised it in dealing with overlapping regulatory challenges. In today's global regulatory environment, countries cannot act in isolation of each other or regions. The instrumentalities of globalization have not only enhanced illicit movement of stolen wealth to offshore financial centres, it has also undermined tax sovereignty of individual countries. In 2015, the OECD and other developed countries agreed on a range of measures to reduce tax avoidance and evasion globally. These measures include requesting states to exchange functional information and bridge information asymmetries between different national tax authorities. The only downside is that the proposed reforms on tax avoidance are in form of Declarations whose legal status in international law are not easily enforceable. Creating laws to order the system is only helpful if the created laws are enforced, otherwise, laws which are not enforced are meaningless. Countries will need to do more to harmonize their tax laws and cooperation against tax avoidance and other financial crimes. Harmonization evolves adoption of common approaches to overcome conflict of laws, different legal systems and cultures. Also, International banks, through corresponding banking should do more not to accept illicit proceeds of crime from Politically Exposed Persons (PEPS) and transmitting them to offshore financial centers for safe custody.

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