

FULL REPORT

SOUTH CENTRE-WATAF JOINT SPECIAL TECHNICAL SESSION ON THE OECD TWO PILLAR SOLUTION

(JULY 4-5 '23)



On 4th and 5th of July '23, the West African Tax Administration Forum (WATAF), that contributes to the efficacy of tax administration and improved public service delivery in support of the development of countries in West Africa organised in Abuja, Nigeria a “Joint Special Technical Session on the OECD Two-Pillar Solution” in collaboration with the South Centre, a Geneva-based intergovernmental policy research think-tank of 55 developing countries. The event was held in hybrid mode and was targeted towards the member countries of the South Centre and WATAF.

Resource Persons

The Special Technical Sessions to explain all aspects of the Two-Pillar Solution were provided by senior officers of the Federal Inland Revenue Service (FIRS), Nigeria and experts from the Independent Commission for Reform of International Corporate Taxation (ICRICT) and the International Bureau of Fiscal Documentation (IBFD). In addition, the event featured as panellists prominent international tax experts from Africa and Latin America from organisations such as the UN Tax Committee, experts from the Governments of countries that are actively engaged in negotiations at the IF, WATAF, the South Centre, IBFD, and ICRICT.

Participants

This was a closed-door event, attended in person by the senior and middle management level officers of tax administration and policy division in Nigeria, some of whom are presently working in

the field of international taxation. In addition, the two-day event was attended online by tax administrations of the member countries of the South Centre and WATAF. All the technical sessions as well as panel discussions were highly interactive with profuse discussions which underlined the benefit that participants acquired from the event and are expected to carry forward in their day-to-day working.



Panellists and Participants who attended the event in person

1.0 Summary of Discussions:

The West African Tax Administration Forum (WATAF) and the South Centre are committed to promoting cooperation, capacity building, and knowledge sharing among members' tax administrations. With this background, these two organisations organised a successful two-day special session ("session") which brought together officials responsible for tax policy, legislation and administration, including relevant supervising ministries, as well as experts representing African, Asian and Latin American countries in OECD Inclusive Framework (IF) work streams, to pre-view the draft rules on the OECD Two Pillar solution. The workshop aimed at enhancing participants' understanding of the rules and their implications for their respective jurisdictions, ensuring member countries of both WATAF and South Centre are well-informed, regardless of the policy choices they make.



Aisha Isah, IBFD Centre for Studies in African Taxation

In the first presentation, Ms Aisha Isah of IBFD-CSAT gave an outline of the **OECD Two Pillar Solution to Taxation of the Digitalised Economy**. The OECD/G20 Inclusive Framework promised to **address some of the legitimate grievances of the developing world** regarding the systemic shortcomings in the current rules to **deliver fairer and more coherent outcomes** from cross-border trade and investments.

While she further provided an exposé on the Two Pillars, she highlighted specific issues for tax jurisdictions and noted the need for careful consideration of cost-benefit analysis by jurisdictions. She listed the major criticisms of Pillar 1 as lack of holistic reform of existing standards, low probability of its sustainability in a rapidly digitalising world, etc.

Mr Kehinde Kajesomo of FIRS delivered a presentation on **Understanding the Draft Pillar 1 Rules**, focusing on Amount A. He explained the detailed pillar one rules, focusing on each of the 12 building blocks of Amount A, beginning with the scoping rule and ending with implementation.

The final presentation for the session on Day 1 was on **Understanding the Draft Pillar 1 Rules—Amount B**, delivered by Ferdinand Akhademe, also of FIRS. His presentation was centred on the implications of Amount B on transfer pricing. Amount B under Pillar 1 is a transfer pricing framework that provides a fixed return for baseline marketing and distribution activities, with the benefit of providing more certainty and reducing transfer pricing disputes.

Mr. Matthew Gbonjubola of FIRS made a presentation on Day 1 which led the panel discussion on **Pillar 1 Implications for Participating Jurisdictions**. He provided general view spanning Amount

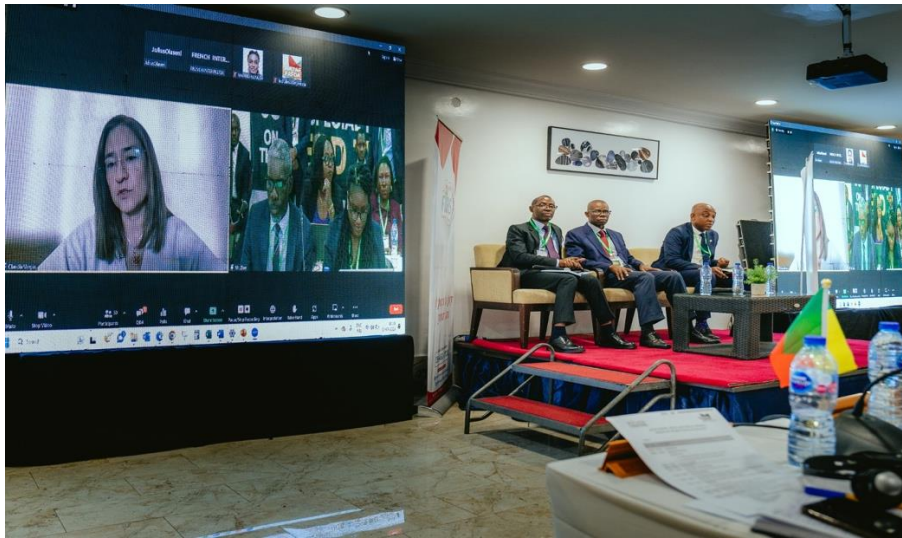
A's complexity, political considerations against core tax principles, the overall cost-benefit outcome, and the approach to economic impact assessment. He also pointed out the effects of the Pillar 1 rules. Moderated by Mr. Babatunde Oladapo, Executive Secretary, WATAF, the panel discussion covered a range of the above-mentioned topics. The panel discussion also featured Mr Kehinde Kajesomo, FIRS, Nigeria and Ms. Claudia Vargas Cifuentes, Member, IF Steering Group from Colombia.



Mr. Matthew Gbonjubola, Co-Chair of the UN Tax Committee and Federal Inland Revenue Service of Nigeria



Mr Kehinde Kajesomo, Deputy Director, Tax Policy Department, Federal Inland Revenue Service of Nigeria



Ms. Claudia Vargas Cifuentes, Member (Colombia), OECD Inclusive Framework Steering Group

On the topic, ***Understanding the Draft Pillar 2 Subject to Tax Rules (STTR)***, Mr. Kehinde Kajesomo, described STTR as a treaty-based rule that applies to intra-group payments from source States that are subject to low nominal tax rates in the State of the payee, where, under a tax treaty, a source State has ceded taxing rights on certain outbound intragroup payments, it should be able to recover some of those rights where the income in question is taxed in the State of the payee (i.e., the residence State) at a nominal rate below 9%. It is designed to help developing countries with lower administrative capacities protect their tax bases. The STTR covers tax treaties between developing countries and tax jurisdictions with a nominal domestic tax rate below 9%.

Finally, on ***Understanding the GLoBE Rules under Pillar 2***, Mr. Emmanuel Eze of ICRICT gave an overview of the post BEPS reforms in the international tax regime (BEPS 2.0), with GloBE a part of BEPS 2.0 and a key aspect of the Pillar 2 proposal. He explained that the GloBE rules comprises a set of interlocked rules: the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR), with possible interaction with the Qualified Domestic Top-up Tax (QDMTT). Together, the rules target the payment of a global minimum tax of 15% by MNEs with global turnover greater than EUR 750 million.

The second panel discussion on Day 2 was moderated by Mrs. Tochukwu Sandra Onyemata featuring Mr. Carlos Protto, Member, IF Steering Group from Argentina, Mr. Emmanuel Eze from ICRICT and Ms. Aisha Isa from the IBFD. The discussion focused on analysis of the potential impact of the draft rules, identification of challenges and opportunities arising from the implementation and case studies and examples illustrating the implications on participants' jurisdiction-specific concerns and considerations.



Mr. Carlos Protto, Member (Argentina), OECD Inclusive Framework Steering Group

The final panel discussion on Day 2 featured discussion on Perspectives from the Steering Group of the Inclusive Framework. Mr. Carlos Protto and Mr. Kehinde Kajesomo gave their views, while Mr. Dan-Asabe Ozayashi spoke from the perspective of the areas requiring capacity building among member countries.

2.0 Attendance:

In attendance were 194 virtual attendees and 54 in-person attendees.



Virtual Attendees

S/n	Country	Attendee
1	Angola	1
2	Argentina	1
3	Bangladesh	1
4	Belgium	1
5	Benin	1
6	Bolivia	1
7	Botswana	1
8	Brazil	1
9	Burkina Faso	7
10	Cabo Verde	3
11	Colombia	4
12	Egypt	1
13	Eswatini	5
14	Gambia	7
15	Ghana	8
16	Guinea	3
17	Guinea-Bissau	1
18	India	7
19	Indonesia	4
20	Jamaica	1

21	Kenya	6
22	Liberia	3
23	Madagascar	3
24	Malawi	2
25	Mali	1
26	Mauritius	2
27	Morocco	3
28	Myanmar	2
29	Namibia	1
30	Niger	1
31	Nigeria	61
32	Pakistan	3
33	Philippines	3
34	Rwanda	1
35	Sierra Leone	1
36	South Africa	2
37	Switzerland	2
38	Tanzania	3
39	Togo	9
40	Uganda	2
41	United Kingdom	2
42	United States	1
43	Western Sahara	1
44	Zimbabwe	20
		194

Physical Attendees

S/n	Country	No of Attendees
1	Benin	2
2	Burkina Faso	1
3	Nigeria	49
4	Togo	1
5	UNDP	1
		54

3.0 Observations:

1. Most jurisdictions may treat the 15% GloBE minimum tax rate as a ceiling, not a starting point.
2. Developing countries rely a lot on WHT for revenue assurance, some WHT will not be treated as covered taxes under GloBE Rules, while WHT may significantly reduce Amount A allocable to market jurisdictions.
3. Administrative complexity and compliance costs, especially in developing countries, will affect implementation of the rules.
4. Some countries have already started implementing the GloBE rules in their jurisdictions. This implies that they have an added advantage over others, especially the developing countries that are new entrants to the rules.

5. The final Amount A rules (scope revenue and profitability threshold, averaging mechanism etc.) reduced potentially covered entities from 2300 MNEs to about 100.
6. Out-of-scope companies are also not subject to unilateral measures.
7. Amount A's mandatory dispute resolution mechanism will subsume all TP, PE, and business profit allocation issues in a market jurisdiction. Mandatory binding dispute resolution will prevent the application of domestic law/remedies, and the matter will be decided by an independent panel.
8. If countries of the Global North do not join Amount A, in that case, market jurisdictions could implement unilateral measures. Additionally, more nations can adopt Article 12B of the UN Model Tax Convention into tax treaties.
9. Possible loss of tax revenue for developing countries may arise under the GloBE Rules if these countries do not adopt Domestic Minimum Tax or Alternate Minimum Tax.

4.0 Key Takeaways from the Workshop:

1. The structures and rules of Pillar One and Pillar Two are highly complex. Countries considering them must see whether they are suitable for their administrative capacity.
2. Amount A can only work if developed countries agree to give up taxing rights to market jurisdictions. Developing countries are therefore advised to wait and watch until the main developed countries, where the bulk of the Amount A in-scope companies are headquartered, implement Amount A.
3. To the detriment of developing countries, withholding tax (WHT) has been taken into account in the Amount A calculation, despite that WHT is a mechanism for collecting taxes on 'income', whereas Amount A is applied on 'residual profits'.
4. Adjustment of WHT and Marketing and Distribution Safe Harbour (MDSH) can reduce, perhaps substantially, the Amount A allocation to developing countries.
5. With the inclusion of the materiality threshold and mark-up exclusion, STTR may not yield tangible revenue for developing countries.
6. GloBE rules require a re-visit of the exemption regime (especially profit-based incentives).
7. WATAF member countries cannot afford to not take action on GloBE rule implementation because, as other countries implement this, it will impact the non-action takers and therefore, developing countries have to apply QDMTT or alternative minimum taxes to prevent ceding of top-up tax to another jurisdiction under IIR.
8. Failure of a developing country's or market jurisdiction's refusal to adopt the GloBE Rules will not impact the developed country's right to tax whatever tax is forgone in the developing jurisdiction.
9. STTR provides developing countries with opportunities to claw back the taxing rights ceded under its tax treaties to residence jurisdictions that are low-tax jurisdictions.
10. Work continues at the UN Committee of Experts and the OECD of other aspects relating to the taxation of the digitalisation of the economy.
11. It may not be necessary for WATAF countries, especially those without UPE, to implement the core GloBE rules, namely, the IIR and UTPR.
12. In this journey, the role of key stakeholders needs to be carefully analysed, and WATAF is ready to lead the intervention among member Tax Administrations.

5.0 Recommendations:

1. There is a need for jurisdictions to carefully carry out cost-benefit analysis to determine whether Amount A works for them or not. This means that countries should do their economic impact assessment of Amount A to know revenue impact for their country.

2. Such analysis should be extended to the pros and cons of GloBE rules and STTR.
3. Countries should individually look at the monetary costs involved in Amount A mandatory dispute resolution mechanism, which could be exorbitant. Also, jurisdictions should take into account their Constitutional provision, whether it allows mandatory binding arbitration.
4. The capacity building of staff in international tax should be a priority for developing countries to keep up with what is happening in the global tax space, including in data analysis and management, treaty negotiations, etc.
5. Member countries of WATAF and South Centre may choose to adopt alternative minimum taxes designed in different ways to suit whatever purpose they serve. This protects tax bases.
6. Developing countries should, as a matter of urgency, draw up a national strategy for immediate streamlining of tax incentives to avoid ceding their tax bases to other jurisdictions, owing to the implementation of Pillar 2 rules.
7. Developing countries should also take immediate steps to forge and implement policy options in response to Pillar 2, which may include changing the income tax rules to raise the effective tax rate to a minimum of at least 15% or introducing a Qualified Domestic Minimum Top-up Tax (QDMTT).
8. Developing countries should compare the UN and OECD versions of the STTR before deciding to sign on to the STTR MLI to update their existing tax treaties.
9. Developing countries should carry out analysis of their Effective Tax Rates (ETR), with a view to and reviewing it upwards.
10. Developing countries should take an active interest and participate in the discussions and work of the UN Tax Committee, as well as IF at the OECD, so that decisions taken are to their benefit.

Concluding Remarks

The South Centre and WATAF have a history of collaborations in areas of taxation for the benefit of countries of the global south. The successful conclusion of the said two-day “Joint Special Technical Session on the OECD Two-Pillar Solution” has further strengthened the partnership of the two like-minded organisations purportedly to support the capacity building endeavours of member States, augment their awareness in respect of the intricacies of evolving international taxation rules, and enable them to garner their rightful share of taxes.