Addis Tax Initiative

ATI partner countries' perspectives on tackling tax-related illicit financial flows

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The International Tax Compact (ITC) is a provider of secretarial services for results-oriented initiatives in the area of tax and development. It aims to promote fair, efficient, and transparent tax systems for sustainable development. The German Federal Ministry for Economic Cooperation and Development (BMZ) has launched the ITC in 2009 and commissioned the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH to facilitate the ITC. The ITC is currently funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) and co-funded by the European Union.

The Addis Tax Initiative (ATI) is a multi-stakeholder partnership consisting of partner countries, developing partners and supporting organisations. It fosters collective action to improve tax systems in light of recognised gaps in development finance and aims to promote fair and effective domestic revenue mobilisation (DRM), policy coherence and the social contract through partnerships and knowledge building.

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Abbreviations and Acronyms

Addis Agenda	Addis Ababa Action Agenda for financing sustainable development
AEOI	Automatic Exchange of Information
ALP	Arm's Length Principle
AMLA	Anti-Money Laundering Act
APA	Advance Pricing Agreement/Arrangement
ATAF	African Tax Administration Forum
ATAF AMATM	ATAF Agreement on Mutual Assistance in Tax Matters
ASYCUDA	Automated Systems for Customs Data
ATI	Addis Tax Initiative
AU	African Union
AUC	African Union Commission
BCAA	Bilateral Competent Authority Agreement
BEPS	Base Erosion and Profit Shifting
BO	Beneficial Ownership
CA	Customs Act
CbCR	Country-by-Country Reporting/Reports
CRS	Common Reporting Standard
CUP	Comparable Uncontrolled Price
DGT	Directorate General of Taxes – Indonesia
DRM	Domestic Resource/Revenue Mobilisation
DTAA	Double Taxation Avoidance Agreement/Convention
DST	Digital Tracking Solution
EAC	East African Community
EAC-CMA	East African Community Customs Management Act 2004
EAC-CMR	East African Community Customs Management Regulations
ECA/UNECA	United Nations Economic Commission for Africa
ECDPM	European Centre for Development Policy Management

EOI	Exchange of Information
EOIR	Exchange of Information upon Request
FATCA	Foreign Account Tax Compliance Act of US
FATF	Financial Action Task Force
FBR	Federal Board of Revenue of Pakistan
FDI	Foreign Direct Investment
FIA	Financial Intelligence Authority
FIC	Financial Intelligence Centre
FIU	Financial Intelligence Unit
GAAR	General Anti-Avoidance Rule
GDP	Gross Domestic Product
GFI	Global Financial Integrity
Global Forum	OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes
IATF	Inter-Agency Task Force on Financing for Development UN
IBFD	International Bureau of Fiscal Documentation
IF	OECD/G20 Inclusive Framework on BEPS
IFFs	Illicit Financial Flows
IMF	International Monetary Fund
ITA	Income Tax Act
ITU	International Taxation Unit
KES	Kenya Shilling
KRA	Kenya Revenue Authority
KUP Law	General Tax Provisions and Procedures Law of Indonesia
LoB	Limitation on Benefits
MAATM MC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MAP	Mutual Agreement Procedure
MCAA	Multilateral Competent Authority Agreement
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
MNEs	Multinational Enterprises
MoU	Memorandum of Understanding

ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
ORG	Office of the Registrar General
PKR	Pakistani Rupee
RRA	Rwanda Revenue Authority
RWF	Rwanda Frank
SARS	South African Revenue Service
SDGs	Sustainable Development Goals
TAA	Tax Administration Act
TADAT	Tax Administration Diagnostic Assessment Tool
TIEA	Tax Information Exchange Agreement
TIFFs	Tax Related Illicit Financial Flows
TIN	Tax Identification Number
TIWB	Tax Inspectors Without Borders
TJN	Tax Justice Network
TP	Transfer Pricing
TPA	Tax Procedures Act
TRA	Tanzania Revenue Authority
TZS	Tanzania Shilling
UGX	Ugandan Shilling
UK	United Kingdom
UN	United Nations
UNBS	Uganda National Bureau of Standards
UNCTAD	UN Conference on Trade and Development
UNGA	UN General Assembly
UNODC	UN Office on Drugs and Crime
URA	Uganda Revenue Authority
US	United States/United State of America
USD	US Dollar
VAT	Value Added Tax
WBG	World Bank Group
WHT	Withholding Tax

Glossary

For the purpose of this study, the term tax-related illicit financial flows (TIFFs) cover tax evasion, tax avoidance, transfer mispricing/abusive transfer pricing and trade mis-invoicing as defined hereafter:

Tax evasion: It circumvents income taxation or tax obligations due to sales of goods and services through trade misreporting and mis-invoicing, falsely claiming eligibility for tax incentives or not declaring personal income or corporate profits. These practices are followed by the illicit transfer of financial resources from one jurisdiction to another and they are major components of TIFFs.

Tax avoidance: It is a legal practice that is perpetrated through strategies that exploit gaps and mismatches in tax rules and systems to make profits "disappear" for tax purposes (shrinking the tax base). Or they shift profits from the jurisdictions where the profits are made to places where the firm has little or no real activity, but tax rates are low. Tax avoidance and profit shifting also occur through trade mis-invoicing and the abuse of transfer pricing to reduce a multinational enterprise's (MNEs) tax liabilities.

Transfer mispricing/Abusive transfer pricing: A transfer price may be manipulated to shift profits from one jurisdiction to another, usually from a higher-tax to a lower-tax jurisdiction. It is about deliberately setting incorrect prices to shift income and is a well-known source of TIFFs.

Trade mis-invoicing: It refers to the intentional misstating of the value, quantity or composition of goods on customs declaration forms and invoices presented by importers or exporters to customs agencies, usually for the purposes of evading taxes or laundering money.[1] It occurs through import under-invoicing, import over-invoicing, export under-invoicing and export over-invoicing. The trade mis-invoicing occurs through commercial invoices and customs declarations, but the transfers and motivations involved are linked to money laundering, beneficial ownership and cross-border tax evasion and tax avoidance i.e. TIFFs. TIFFs through trade mis-invoicing pose the greatest threat to domestic revenue collection and foreign exchange earnings in many countries.

1 For further details, see R. Baker, D. Kar et al., Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011, (GFI 2014). https://gfintegrity.org/report/report-trade-misinvoicing-in-ghana-kenya-mozambique-tanzania-and-uganda/ (accessed 28 Nov. 2022).

Executive summary

It is axiomatic that illicit financial flows (IFFs) in general and tax related IFFs (TIFFs) in particular pose systemic risks for the financial and tax systems of countries by hampering the efforts to enhance domestic revenue/resource mobilisation (DRM) and fostering inequality, creating poverty, insecurity and financial challenges, and undermining public confidence and trust.

The resulting effects of IFFs/TIFFs impede, among others, implementation of the United Nations (UN) 2030 Agenda for sustainable development (UN 2030 Agenda), including the 17 sustainable Development Goals (SDGs) as well as the African Union (AU) Agenda 2063 of African countries (AU Agenda 2063). It is important, therefore, to stress that DRM is at the heart of the UN 2030 Agenda as well as the AU Agenda 2063. Hence, helping countries to mobilise more domestic resources through taxation is a growing area of development practice.

One of the core objectives and the most pressing issue of the Addis Tax Initiative (ATI) Declaration 2025 is enhancing DRM through fair, effective and efficient tax systems. ATI partner countries have committed to foster DRM and increase their resources to invest in programmes that support the achievements of ATI Declaration 2025. Commitment 3 of the ATI Declaration 2025 emphasised particularly that ATI member countries need to apply coherent and coordinated policies to foster DRM and combat TIFFs which are the most devastating barrier to the afore-mentioned development agendas and commitments toward DRM. Thus, TIFFs issues are of critical importance for ATI partner countries that are endeavouring to mobilise domestic revenues needed to achieve the UN 2030 Agenda and the AU Agenda 2063, among other initiatives.

Currently, there is neither a universally accepted definition of IFFs/TIFFs nor consensus on what should be included in the scope of IFFs/TIFFs and how the component parts should be determined. IFFs/TIFFs are multi-dimensional, comprising several different kinds of activities, including flows originating from illicit activities or transactions to transfer of funds that have a licit origin, and flows stemming from licit activity being used in an illicit way. As a result, the concepts of IFFs/TIFFs have been understood and addressed differently by different stakeholders. Some define IFFs/TIFFs strictly as financial flows that are illegal in the way that they are created, transferred, or utilised outside the country where they are obtained. This definition will not accommodate practices such as tax avoidance that are orchestrated within legal framework but against the intent or object and purpose of the law, meaning they are legal but illegitimate. Others define IFFs/TIFFs broadly as all financial flows that have a negative impact on an economy taking into account all direct and indirect effects in the context of the specific political economy of the society. This study adopts the broader definition of TIFFs since financial resources crossing borders that are illegally or illegitimately earned, transferred, used, or concealed abroad negatively affect the source state of such resources.

The actual volume of IFFs/TIFFs and that of their different components is extremely hard to measure, and estimates vary widely because it depends on the choice of the methodology used. Despite difficulties in quantifying IFFs/TIFFs, there is a range of estimations made by different studies and reports of regional and international organisations. The various estimates provide evidence that confirms that IFFs/TIFFs are devastating economic and development issues that call for an immediate need for drastic action.

There have been various initiatives and policy recommendations issued or proposed by different international and regional organisations on tax matters and money laundering issues which can be used in combating TIFFs. For instance, the developments over the past decade to improve tax transparency, enhance interagency cooperation in fighting tax evasion and tax avoidance, as well as capacity-building initiatives for tax administrations can all be utilised by countries to better tackle TIFFs. This study discusses some of these initiatives and policy recommendations.

It is encouraging to observe that ATI partner countries have taken various regulatory measures to combat TIFFs despite the difference in the scope of the measures and magnitude of their implementation in these countries.

This study presents the main practices of some of the ATI partners countries that have participated in this study, with the aim to enable ATI partner countries take lesson from each other in combatting TIFFs. The study covers various policy and regulatory frameworks of the countries in combatting TIFFs including:

- policies, strategies and legal frameworks on tax evasion, tax avoidance, transfer mispricing, and trade mis-invoicing in cross border context as well as on transparency and exchange of information (EOI) in tax matters;
- institutional set-ups to enforce the policy and legal framework, their level of implementation and interagency cooperation;
- international cooperation for transparency and EOI in tax matters; and
- challenges, successes, and next steps in combatting TIFFs.

Some of the main conclusions and suggestions included in this study report are as follows:

- Most ATI partner countries' policies and strategies to tackle TIFFs stem from existing tax laws and none of them specifically refer to IFFs/TIFFs as a threat for their DRM efforts under their DRM strategies, development plans or economic policies.
- ATI partner countries' initiatives on transfer pricing (TP), transparency and EOI as well as commitments for international cooperation are encouraging despite a range of differences that exist in the countries' domestic provisions and their level of enforcement. They still need to be improved.
- Implementation of TP issues and EOI options are challenging in terms of collecting information for TP and EOI purposes and in coordinating the working relationship among different units or institutions.
- The issue of trade mis-invoicing and its negative effects are not well considered.
- The level of interagency cooperation in combating TIFFs is also very low as compared to the cooperation framework in fighting against money laundering.
- There are human and technological capacity limitations in tackling TIFFs including understanding the prevalence of IFFs/TIFFs and their revenue impact.

Based on the practices, lessons learnt, successes and challenges shared by the ATI partner countries involved in this study, we recommend the following to all ATI partner countries:

- strong political commitment and leadership are needed;
- develop a robust policy and legal framework against TIFFs – holistic approach;
- set up or strengthen institutions responsible to tackle TIFFs;
- create an effective interagency cooperation/framework;
- increase working on human and infrastructural/technological capacity building; and
- enhance transparency, EOI and international cooperation on tax matters.

The actions that can be taken by development partners or donors to improve the effectiveness of tackling TIFFs include:

- encouraging countries to join the international tax transparency and EOI forums including the MAATM MC. The more jurisdictions join the initiative, the less room there is for cross-border IFFs/TIFFs;
- increasing the awareness and acceptance of the threat of TIFFs by the relevant government officials to gain their practical commitment and to foster interagency cooperation; and
- enhancing or continuing to support training and capacity-building initiatives.

1

Introduction

1.1. Background

Over the last decade, the concept of IFFs has emerged as a powerful and constructive umbrella under which previously unconnected issues are brought together. Most importantly, in July 2015, during the Third International Conference on Financing for Development, the heads of state and government agreed to the Addis Ababa Action Agenda (the Addis Agenda),[2] a post-2015 development agenda that culminated in the adoption of the United Nations (UN) 2030 Agenda for Sustainable Development (UN 2030 Agenda),[3] encompassing 17 sustainable development goals (SDGs). The Addis Agenda focused, among others, on a comprehensive set of policy actions to redouble efforts to reduce IFFs, combat tax evasion and reduce opportunities for tax avoidance by 2030 to establish a strong foundation for the implementation of the SDGs.[4] It is important to stress that DRM is at the heart of the UN 2030 Agenda. Hence, helping countries to mobilise more domestic resources through taxation is a growing area of development practice.[5] This is particularly relevant for developing countries, many of which have begun to dedicate more resources and attention to this topic, which is also emerging as an important area for donor intervention.[6]

One of the core objectives and the most pressing issue of the Addis Tax Initiative (ATI) Declaration 2025 is to enhance the mobilisation of domestic resources through fair, effective, and efficient tax systems. ATI partner countries have committed to foster DRM and increase their resources to invest in programmes that support the achievements of the UN 2030 Agenda as well as the African Union (AU) Agenda 2063 of African countries (AU Agenda 2063).[7] Effective DRM helps countries raise and spend their own resources and ensures a sustainable source of development finance. However, a number of challenges continue to hamper the DRM efforts and among the key challenges are IFFs.[8] The UN 2030 Agenda and the AU Agenda 2063 acknowledge that combatting IFFs are inherently linked to development since IFFs cause vast losses in revenue that could have been used for development.[9]

The ATI Declaration 2025 emphasised, particularly through Commitment 3, that ATI member countries need to apply coherent and coordinated policies to foster DRM and combat tax related illicit financial flows (TIFFs) which are the most devastating barrier to the afore-mentioned development agendas and commitments toward DRM. Thus, IFFs in general and TIFFs in particular are issues of critical importance if ATI partner countries are to

2 The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (the Addis Agenda), adopted by the UNGA on 27 July 2015 (Resolution 69/313).

3 Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the UNGA on 25 September 2015 (Resolution 70/1). The Addis Ababa Action Agenda is an integral part of the UN 2030 Agenda.

4 The Addis Agenda, supra n. 2, at para. 23.

5 Efforts that are being made through the Addis Tax Initiative are a very good example of this.

6 M. Hearson, Tax-motivated illicit financial flows: A guide for development practitioners, p. 1 (Anti-Corruption Resource Centre 2014).

7 AUC, Agenda 2063: The Africa We Want, (AUC Publishing 2015), Available at https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (accessed 25 Jan. 2023).

8 AUC, Domestic Resource Mobilization: Fighting against Corruption and Illicit Financial Flows p. 153 (AUC Publishing 2019).

9 Id., at p. 76.

mobilise domestic revenues needed to achieve the UN 2030 Agenda and the AU Agenda 2063, among other initiatives. The agendas broadly underpin efforts to reduce poverty and inequality, ensure adequate health and education, and develop basic infrastructure to support more inclusive growth. Having adequate resources is also "essential to ensure that countries can achieve other priorities and objectives including developing human and institutional capacity which are key objectives in successful DRM strategies".[10]

Currently, there is neither a universally accepted definition of IFFs nor consensus on what should be included in the scope of IFFs and how the component parts should be determined. IFFs are multi-dimensional, comprising several different kinds of activities, including flows originating from illicit activities or transactions to transfer of funds that have a licit origin, and flows stemming from licit activity being used in an illicit way.

Some studies define IFFs as financial resources crossing borders that are illegally or illegitimately earned, transferred, or hidden abroad.[11] This definition may cover morally questionable practices such as tax avoidance that undermine the public good and it implies that not all IFFs stem from illegal activity.

Similar to IFFs, there is no universally accepted definition for TIFFs. TIFFs may arise from decisions and non-decisions made by powerful individuals, corporations and public institutions pursuing their interests, such as maximising their returns, and may exploit loopholes in rules or the weaknesses of regulatory entities to minimise tax obligations and to transfer financial resources abroad illicitly. Therefore, it is not surprising that the link between tax and IFFs is generating increased international attention.[12]

In view of Commitment 3 of the ATI Declaration 2025 and considering the above definition to IFFs, TIFFs could broadly cover any tax abuse practice that undermines the object and purpose of a tax system and deprive countries of resources that could be used for financing public goods, and which fosters inequalities and undermines trust in governance. These practices can be considered detrimental to the sustainable development of countries, even though such activities are generally not illegal. Consequently, for the purpose of this study the term "TIFFs" cover tax evasion, tax avoidance, transfer mispricing and trade mis-invoicing.

It is axiomatic that TIFFs can seriously undermine the DRM and UN 2030 Agenda efforts. The actual volume of IFFs/TIFFs and that of their different components is extremely hard to measure, and estimates vary widely because it depends on the choice of the methodology used. Nonetheless, there is consensus that:

- the outflow of financial resources through IFFs/TIFFs in particular from developing countries is substantial;

10 Id., at p. 34.

11 See AU/UNECA, Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa (AU/UNECA 2015); and UNECA, Economic Governance Report I: Institutional Architecture to address Illicit Financial Flows (UNECA 2021); and L. Miyandazi & M. Ronceray, Understanding illicit financial flows and efforts to combat them in Europe and Africa, Ecdpm Discussion paper No. 227, p. 1 (2018).

12 Hearson, supra n. 6, at p. 1.

- IFFs/TIFFs have a significant negative impact on development; and
- overall, IFFs/TIFFs contribute to making developing countries net creditors to the rest of the world.[13]

A substantial portion of these outflows relates to tax evasion and tax avoidance, including abusive transfer pricing and trade mis-invoicing practices. The practice of hiding income, by any means, from revenue authorities and transferring it abroad hampers the efforts of DRM. This is because the revenue authorities cannot collect revenue from money that they are unaware of, and “the government cannot finance development projects with revenue they cannot mobilise, and they cannot hold wrong doers accountable for abuses they cannot trace”.[14]

Section 1.3. of this report, aims to lay the foundation for common understanding about the IFFs/TIFFs and conceptual frameworks thereon. Accordingly, it presents a summary of the literature review on the concept and categories of IFFs/TIFFs, the main challenges faced by countries in tackling TIFFs and initiatives, and the options and policy recommendations that are useful in tackling TIFFs.

1.2. Methodology

This study uses a combination of research methods i.e. a desk research review and primary data sources from ATI partner countries. The desk research focuses on laying a foundation for a common understanding of the concept of IFFs in general and TIFFs in particular, the impact of IFFs/TIFFs on development particularly on DRM and the link between TIFFs and DRM, the prominent challenges in combatting TIFFs, lessons from national practices in combatting IFFs/TIFFs, current initiatives and sets of policy recommendations that are useful to tackle TIFFs.

The primary data sources include responses from questionnaires circulated to ATI partner countries and key informant interviews with focal tax officials from Pakistan, Rwanda, and Tanzania as well as written responses to detailed interview questions from Indonesia and Kenya. In this study we have not carried out quantitative analyses on TIFFs, such as the calculation of tax revenue loss due to TIFFs and comparison of TIFFs with gross domestic product (GDP) except for a brief discussion on revenue implications of TIFFs under literature review.

13 AU/UNECA, supra n. 11, at p. 34. See also P. Reuter (ed.), Draining Development? Controlling Flows of Illicit Funds from Developing Countries (World Bank Group 2012); and R. Price, Illicit Financial Flows in North Africa (Algeria, Egypt, Libya, Morocco and Tunisia), 2019 Helpdesk Report, p. 7 (Institute of Development Studies 2019).

14 Baker, supra n. 1.

1.3. Summary of literature review on TIFFs

Concept and categories of IFFs/TIFFs

The concept of IFFs has been understood and addressed differently by different stakeholders. Various studies have addressed the conceptual issues and key themes of (categories of) IFFs from multidisciplinary viewpoints and diversified policy considerations.

In a broader context, IFFs are defined at two ends of a spectrums. At one end of the spectrums, IFFs are defined strictly as financial flows that are illegal in the way that they are created, transferred or utilised i.e. money illegally earned, transferred or used that crosses borders.[15] This definition confines the scope of IFFs mainly to financial resources and proceeds generated only illegally, such as proceeds from corruption,[16] tax evasion[17] and other criminal activities, including drug trafficking, smuggling, counterfeiting and money laundering through commercial transactions.[18]

However, the word “illicit” is different from – and more subjective than – the term “illegal”. Thus, at the other end of the spectrum, IFFs are defined as all financial flows that have a “negative impact on an economy taking into account all direct and indirect effects in the context of the specific political economy of the society”.[19] Accordingly, IFFs are defined as financial resources crossing borders that are illegal or illegitimately earned, transferred, used or concealed abroad.[20] This definition covers “international financial transfers, which are considered illegal or illegitimate due to the origin or destination of the funds, or the method of transfer”.[21] Such a definition brings legal malpractices within the ambit of IFFs. In these definitions, the term “illegitimate” refers to transactions that involve the transfer of funds abroad in non-transparent ways and are driven by motives that undermine the public interest.[22] It covers the most widely used categorisation based on legality. It also covers morally questionable practices, such as tax avoidance, transfer mispricing and aggressive tax planning practised mainly by MNEs and their facilitators.[23]

However, both the broad and the narrow definitions of IFFs have the following two common elements that are crucial to defining IFFs:

- there must be an activity, whether legal or criminal, that generates (illegal or illegitimate)

15 Hearson, supra n. 6, at p. 1.
16 It includes the proceeds of theft, bribery, graft, and embezzlements of national wealth by government officials. See AUC, supra n. 8, at p. 77.
17 This is limited to a direct violation of tax laws, including misrepresentation, misreporting and mis-invoicing related to trade activities.
18 AUC, supra n. 8, at p. 77.
19 Hearson, supra n. 6, at p. 2; See also S. Blankenburg & Mushtaq Khan, Governance and Illicit Flows (2013), available at https://eprints.soas.ac.uk/17304/1/Governance%20and%20Illicit%20Flows.pdf (accessed 9 Mar. 2022).
20 AU/UNECA, supra n. 11; UNECA, supra n. 11; and Miyandazi & Ronceray, supra n. 11.
21 Miyandazi & Ronceray, supra n.11.
22 UNECA, supra n. 11, at p. 7.
23 Id.

proceeds; and

- there must be a cross-border transfer of the funds obtained from such activity.

In the absence of international consensus on the definition of IFFs and TIFFs, the most important question is whether a flow is "illicit" if it breaches the spirit – but not the letter – of the law.

Given the UN 2030 Agenda on SDGs,[24] the Addis Agenda,[25] the AU Agenda 2063,[26] and the ATI Declaration 2025,[27] which aim at tackling IFFs in order to enhance DRM and realise sustainable development, the common factor needs to be the harmful economic, social and developmental impact of IFFs/TIFFs have – whether illegal or illegitimate – on countries and societies (e.g. DRM and citizens' access to public goods) since IFFs/TIFFs are harmful developmentally whether they are lawful or not, including aggressive tax planning and profit shifting.

In this regard, the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, which was conceived (broadly) in the aftermath of the 2008 global financial and economic crisis, underpinned the need to use a broader definition of IFFs/TIFFs. The OECD/G20 BEPS Reports[28] emphasised that, even though most of the BEPS structures, strategies and practices are technically legal and rely on carefully planned interactions including mismatches between a variety of tax rules and principles, the overall effect of this type of tax planning is the erosion of the tax base in countries in a manner that is not intended under domestic tax policies.[29]

Therefore, since profit shifting constitutes a major revenue loss to especially vulnerable countries, a definition of IFFs/TIFFs based strictly on legality would fail to fully identify the financial resources that should be retained for those countries' development.[30]

Based on the preceding discussions on the definition and categories of IFFs, transfer mispricing and tax avoidance have been subject to intense debate. The debate centres on the treatment of tax evasion and tax avoidance. Tax evasion involves a violation of the law, whereas tax avoidance involves the exploitation of domestic and international tax rules (loopholes) to gain advantages in contrast to the spirit of such laws and the intention of the lawmakers of countries.[31]

24 https://sdgs.un.org/goals (accessed 9 Mar. 2022).

25 https://www.addistaxinitiative.net/resource/ati-declaration-2025 (accessed 9 Mar. 2022).

26 https://au.int/en/agenda2063/overview (accessed 9 Mar. 2022).

27 Addis Tax Initiative.

28 See OECD, Addressing Base Erosion and Profit Shifting (OECD 2013); https://www.oecd.org/tax/beps/closing-tax-gaps-oecd-launches-action-plan-on-base-erosion-and-profit-shifting.htm (accessed 9 Mar. 2022); OECD, Action Plan on Base Erosion and Profit Shifting (OECD 2015); and OECD, OECD/G20 Base Erosion and Profit Shifting Project: Explanatory Statement – 2015 Final Reports (OECD 2015), available at https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf (accessed 9 Mar. 2022).

29 Id., and https://www.oecd.org/tax/beps/closing-tax-gaps-oecd-launches-action-plan-on-base-erosion-and-profit-shifting.htm (accessed 9 Mar. 2022).

30 UNECA, supra n. 11, at Economic Governance Report I: Institutional Architecture to address Illicit Financial Flows p. 7. See AUC, supra n. 8, at pp. 14, 63 and 119.

31 UNCTAD, Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa p. 5 (UNCTAD 2020).

The TIFFs that arise from tax evasion and tax avoidance have wide-ranging negative implications for genuine taxpayers and the society at large because the tax burden shifts towards sources and taxpayers from which tax can be more easily collected. This undermines the balance in the allocation of the tax burden and erodes trust in the fairness of the national tax system and in the government more generally.[32] In turn, it can lead to lower levels of tax compliance.

Tax avoidance is not illegal and the associated financial flows are therefore not considered illicit as per the narrow definition of IFFs. However, tax avoidance can have similar repercussions for DRM in the way that tax evasion does. Therefore, tackling tax avoidance by MNEs goes hand in hand with global efforts to fight tax evasion and other financial crimes to enhance DRM to support sustainable development.[33]

In view of this, this study adopts a broad definition of TIFFs that incorporates all abusive tax practices, such as tax evasion, tax avoidance, transfer mispricing and trade mis-invoicing, which undermine the object and purpose of a tax system and (i) deprives countries of resources that could be used for financing public goods; (ii) fosters inequalities; and (iii) undermines trust in the government.

Revenue implications of IFFs/TIFFs

IFFs/TIFFs are widespread and secretive by nature. Regardless of how IFFs/TIFFs are precisely defined, these flows are an impediment to DRM and the development of countries. They reduce the expected growth benefits of communities and undermine the development potential of countries. As a result, they have a harmful impact at the national, regional, continental, and global levels.

There are no methodologies to accurately quantify revenue losses due to IFFs. Various studies emphasised that the main challenge in quantifying the impact of IFFs/TIFFs relate to difficulties in gathering data for the measurement of IFFs due to the fact that such information is scattered across a range of institutions at the national level. [34] Some studies underscore that "different components of IFFs are not directly comparable and aggregation of IFFs estimates across channels and components could result in double counting"[35] and therefore recommend a "component-by-component and channel-by-channel analysis and estimation of IFFs"[36] for a better estimation. While it is difficult to quantify IFFs/TIFFs, there is widespread agreement that significant amounts are involved, that these amounts are growing and that they pose deep problems.[37]

Despite the difficulties in quantifying IFFs/TIFFs, there are many estimations made by dif-

32 These harmful effects have been addressed in the OECD/G20 BEPS Project.

33 AUC, supra n. 8, at pp. 85-86.

34 UNCTAD, supra n. 31, at p. 18.

35 IATF, Financing For Development: Progress and Prospects 2018 p. 53 (IATF 2018). See also GFI, Illicit Financial Flows from Developing Countries: 2002-2011 p. 1 (GFI 2013).

36 IATF, id.

37 AUC, supra n. 8, at p. 99.

ferent studies and reports of regional and international organisations (UNCTAD, IMF, WBG, OECD, GFI, AU/UNECA, etc.). Predictably, the estimates of financial outflows through IFFs/TIFFs vary significantly from one report to another and from one organisation to another, depending on the methodologies used and areas covered.[38] For example, the GFI report "Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World" (2015)[39] estimates that around USD 500 billion escape from developing countries annually through IFFs, while the 2013 GFI report "Illicit Financial Flows from Developing Countries: 2002-2011" estimates an average IFFs outflow of USD 946.7 billion per year, and of USD 5.9 trillion over the decade from developing countries.[40] The latter report also shows that the pattern of IFFs outflows varies significantly per continent. According to this report, Asia accounts for 39.6%, developing European countries for 21.5%, the Western Hemisphere for 19.6%, the Middle East and North Africa region for 11.2% and Africa for 7.7% of the estimated average IFFs outflow from 2002 to 2011.[41] Moreover, the GFI reports underscored that IFFs outflows from developing countries increased "by an average of more than 10 percent per year over the decade".[42]

The AU/UNECA High-Level Panel Report (2015) highlights that, over the last 50 years, Africa is estimated to have lost an excess of USD 1 trillion in revenue due to IFFs.[43] According to this report, the estimated loss is roughly equivalent to all of the official development assistance (ODA) received by Africa during the same timeframe.[44] The AU/UNECA Report also made an annual estimate of IFFs from the continent in excess of USD 50-60 billion.[45] According to the AU Commission (AUC) Report (2019),[46] the estimates hover between USD 50 and 80 billion annually and seem to be on an upward trajectory. However, there is no argument regarding the fact that these outflows, due to their size, reduce the economic potential of countries.[47]

In terms of TIFFs, the UNCTAD World Investment Report (2015) [48] estimates that developing countries lose USD 100 billion a year in taxes due only to the routing of foreign direct investment (FDI) through tax havens. According to Christian Aid estimates, developing countries lose USD 160 billion annually and lost about USD 2.5 trillion in tax revenue between 2000 and 2015.[49] Despite the substantial difference between the revenue losses estimated in the different reports of various organisations, the reports explored the magnitude of the TIFFs problem by examining the economic data available.

38 Id., at p. 21.

39 GFI, Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World p. 2 (GFI 2015).

40 GFI, supra n. 35, at p. iii.

41 Id., at p. ix. It also emphasises that there are fluctuations in the figures in these regions from time to time.

42 Id., at p. iii.

43 AU/UNECA, supra n. 11.

44 Id.

45 Id., at p. 79.

46 AUC, supra n. 8.

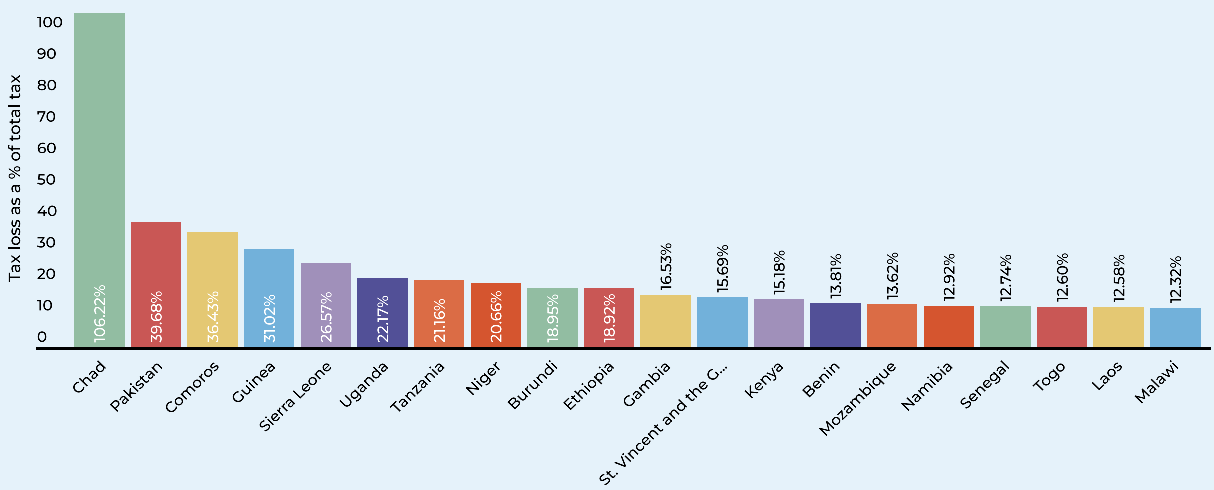
47 Id., at p. 21.

48 UNCTAD, World Investment Report: Reforming International Investment Governance (United Nations 2015).

49 Christian Aid, cited in GFI, Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World p. 17 (GFI 2015).

For example, the Tax Justice Network estimated the tax loss of 20 countries in 2017 (*see* Figure 1)[50] in comparison with their total tax revenue. The estimations were very alarming, especially for countries such as Pakistan, Sierra Leone, Tanzania, and Uganda (which are ATI partner countries),[51] because their estimated losses exceeded 20% of their total tax revenue. In general, the magnitude of such losses is greater in natural-resource-rich countries than in other countries.[52]

Figure 1: Estimated Tax Loss



According to various studies and reports, trade mis-invoicing is one of the latest components of measurable IFFs/TIFFs, and there is a range of estimates in this regard. The global IFFs outflow from developing countries is estimated to be approximately USD 542 billion per year on average (over a 10-year period between 2002 and 2011), and trade mis-invoicing makes up 80% of this.[53] According to a GFI report (2021)"Trade-Related Illicit Financial Flows in 134 Developing Countries: 2009-2018", there was a value gap estimated at USD 1.6 trillion in trade

50 A. Cobham, Estimating tax avoidance: New findings, new questions, Tax Justice Network (22 Mar. 2017), available at https://taxjustice.net/2017/03/22/estimating-tax-avoidance-questions/ (accessed 9 Mar. 2022).

51 https://www.addistaxinitiative.net/ati-members (accessed 16 Nov. 2022).

52 UNECA, supra n. 11.

53 Baker, supra n. 1.

between 134 developing countries and all of their global trading partners in 2018 alone.[54]

A study undertaken by UNECA from 2001 to 2010 estimated that African countries lost up to USD 407 billion from trade mis-invoicing alone,[55] whereas the GFI report estimated that same loss to be around USD 242 billion for the same timeframe,[56] showing substantial differences from the cumulative amount of loss.

Despite the predictable differences in estimates, the IFFs/TIFFs outflows intrinsically and significantly affect the tax revenue that countries could collect through, among others, value added tax (VAT) or goods and services tax (GST) or sales tax, excise tax, customs duties and corporate income tax.

Therefore, the various estimates provide further evidence that IFFs and TIFFs are devastating economic and development issues that call for an immediate need for drastic action.

Challenges and initiatives in tackling TIFFs

The challenges that are being faced by countries in tackling TIFFs can be broadly seen from global, continental and national perspectives. Such challenges also have diverse characteristics, such as their policy and legal frameworks, institutional setups, interagency cooperation, human capacity, technological infrastructures, financial resources and international cooperation. This results in the following difficulties:

- limited or overlapping and uncoordinated mandates at the international level;
- complex procedures underpinning international cooperation;
- a lack of coordinated legal and institutional framework and complex procedures underpinning continental or regional cooperation;
- inadequate regulatory framework;
- a lack of a coordinated response across individual governments at the national level;
- duplication, overlapping of functions and lack of coordination among different agencies; and
- a lack of human and technological capacity.

Despite the range of challenges enumerated above, there are various initiatives that could help tackle TIFFs. Some of these initiatives have been linked directly to combatting IFFs/TIFFs, and others were designed from tax evasion and tax avoidance perspectives but are crucial to addressing TIFFs.

The initiatives at the global, continental and regional level[57] that have been useful to combat TIFFs include, among others, the following:

54 GFI, Trade-Related Illicit Financial Flows in 134 Developing Countries – 2009-2018 (GFI 2021). The report stresses that the estimates were made based on the most recent year's comprehensive data.
55 AU/UNECA, supra n. 11, at p. 33.
56 Id.
57 See AUC, supra n. 8, at p. 66.

- the United Nations General Assembly (UNGA) resolution on Promotion of International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Return to Foster Sustainable Development;[58]
- the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum); [59]
- the Model Agreement on Exchange of Information on Tax Matters (Model TIEA);[60]
- the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAATM MC); [61]
- the OECD Transfer Pricing Guidelines (OECD TP Guidelines);[62] and the UN Practical Manual on Transfer Pricing for Developing Countries (UN TP Manual);[63]
- the OECD Model Tax Convention on Income and on Capital (OECD Model Convention);[64] and the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Model Convention);[65]
- the OECD/ G20 BEPS Project;[66]
- UNCTAD and UNODC's Conceptual Framework for the Statistical Measurement of Illicit Financial Flows[67] and Methodological Guidelines to Measure Tax and Commercial Illicit Financial Flows;[68]
- the GFI - Trade Mis-invoicing Risk Assessment Tool (GFTrade);[69]
- the AU Sub-Committee on Tax and IFFs;
- the African Tax Transparency Initiative;[70]

58 UNGA Resolution 76/196 (A/77304), available at N2140949.pdf (un.org) (accessed 19 Dec. 2022).
59 OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD 2001).
60 Model Tax Information Exchange Agreement of 2002 and its Model Protocol 2015, available at https://read.oecd-ilibrary.org/taxation/agreement-on-exchange-of-information-in-tax-matters_9789264034853-en#page19 (accessed 9 Mar. 2022).
61 OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (1 June 2011), available at https://doi.org/10.1787/9789264115606-en (accessed 9 Mar. 2022).
62 https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm (accessed 25 Jan. 2023).
63 https://www.un.org/development/desa/financing/document/un-practical-manual-transfer-pricing-developing-countries-2021 (accessed 25 Jan. 2023).
64 https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm (accessed 25 Jan. 2023).
65 https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/thematic-areas/UN-model-convention (accessed 25 Jan. 2023).
66 https://www.oecd.org/tax/beps/about/#mission-impact (accessed 9 Mar. 2022).
67 UNCTAD & UNODC, Conceptual Framework for the Statistical Measurement of Illicit Financial Flows (UNCTAD & UNOCD 2020), available at https://unctad.org/system/files/official-document/IFF_Conceptual_Framework_EN.pdf (accessed 19 May 2022).
68 UNCTAD, Methodological Guidelines to Measure Tax and Commercial Illicit Financial Flows: Methods for pilot testing, available at https://unctad.org/system/files/non-official-document/20210917_IFFs-GuidelinesForPilots_en_0.pdf (accessed 19 May 2022).
69 GFTradeTM: A solution for Trade-Related Revenue Loss, (GFI 2021) https://34n8bd.p3cdn1.secureserver.net/wp-content/uploads/2021/05/GFTrade-Brochure-for-Customs-Departments-Central-Banks-and-FIUs.pdf (accessed 12 Dec. 2022).
70 Global Forum, Tax Transparency in Africa 2021: Africa Initiative Progress Report p. 2 (OECD 2021). The decision was made during the Global Forum plenary meeting held on 28 October 2014 in Berlin, Germany.

- the AUC -Yaoundé Declaration on Combatting Illicit Financial Flows from Africa (the Yaoundé Declaration);[71]
- the Asia Tax Transparency Initiative Declaration (Bali Declaration);[72] and
- the Latin America Tax Transparency Initiative (Punta del Este Declaration).[73]

Policy options and recommendations useful to tackle TIFFs

Tackling TIFFs requires understanding the policy and legal frameworks needed and the actors involved. It also requires a wide range of actors to design and implement different policies and actions at various levels of government, including policymakers and operational agencies. Different international organisations have set out various policy options and recommendations that countries should consider when designing and implementing policy and legal frameworks against IFFs/TIFFs. These are:

- the OECD's document on Fighting Tax Crime – The Ten Global Principles;[74]
- the AU/UNECA's 2015 Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa;[75]
- the GFI and others on Accelerated IFF Agenda in Africa;[76]
- ATAF's Six -Pillar Approach to Combatting IFFs;[77] and
- the FATF Recommendations on Combatting Money Laundering and Financing of Terrorism and Proliferation[78]

71 https://www.oecd.org/tax/transparency/what-we-do/technical-assistance/the-yaounde-declaration.htm (accessed 9 Mar. 2022).

72 https://www.oecd.org/tax/transparency/what-we-do/technical-assistance/asia-initiative.htm#:~:text=On%2014%20July%202022%2C%20ministers,resource%20mobilisation%20in%20the%20region. (accessed 28 Nov. 2022). Signatories of the Bali Declaration and members of the Asia Initiative are: Armenia, Brunei Darussalam, China, Hong Kong SAR (China), India, Indonesia, Japan, Kazakhstan, South Korea, Macau SAR (China), Malaysia, Maldives, Mongolia, Pakistan, Singapore and Thailand.

73 https://www.oecd.org/tax/transparency/documents/tax-transparency-in-latin-america-2022.htm (accessed 25 Jan. 2023).

74 OECD, Fighting Tax Crime: The Ten Global Principles (OECD 2017), available at https://doi.org/10.1787/63530cd2-en (accessed 9 Mar. 2022).

75 AU/UNECA, Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa (UNECA 2015).

76 GFI, Accelerating the IFF Agenda for African countries (GFI 2017), available at https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2017/03/Accelerated-IFF-Agenda-Final-Report-English_print.pdf (accessed 9 Mar. 2022). The GFI developed these policy recommendations along with TrustAfrica, Tax Justice Network Africa (TJN-A), Pan African Lawyers' Union (PALU), Centre Régional Africain pour le Dèveloppement Endogène et Communautaire (CRADEC) and Civil Society Legislative Center (CISLAC).

77 https://www.ataftax.org/ataf-executive-secretary-presents-a-six-pillar-approach-to-combatting-illicit-financial-flows-from-africa (accessed 19 Dec. 2022).

78 https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html (accessed 19 Dec. 2022).

2

Survey on the status of ATI partner countries' initiatives against TIFFs

2.1. Introduction

For the purpose of this study, a questionnaire was sent to all ATI partner countries (i.e. there were 25 ATI partner countries at the time of conducting the research and now there are 30 ATI partner countries) through the ATI secretariat and 13[79] out of 25 ATI partner countries have responded to the questionnaire. Furthermore, six ATI partner countries (i.e. Indonesia, Kenya, Pakistan, Rwanda, Tanzania, and Uganda) were selected for further research into the regulatory framework they had in place and their practice, challenges, and successes in combatting TIFFs. A detailed interview questionnaire consisting of nine themes and 54 broad questions was sent to the selected countries. Online interviews were conducted with delegates from the tax authorities of Pakistan, Rwanda, and Tanzania. Indonesia and Kenya submitted answers to the detailed interview questions in writing.

2.2. Summary of main findings on ATI partner countries regulatory framework against TIFFs

This part of the study contains summary of the main findings from the general assessment on the regulatory framework of ATI partner countries in combatting TIFFs based on their responses to the questionnaires. The following five themes (in subsections 2.2.1. to 2.2.5) are used as key indictors to assess ATI partner countries perspectives in combatting TIFFs and we summarise the responses as follows.

2.2.1. Policy and legal framework against TIFFs

Most ATI partner countries have formulated or are developing DRM strategies or national development plans or economic policies with long, medium and short term revenue targets.[80] Given that such strategies, plans or policies contain global, regional and national situation analysis including causes of revenue losses and potential as well as factual threats against DRM efforts, none of the responding ATI partner countries have indicated whether they have a policy, strategy or any other legal document that specifically refers to TIFFs as a threat to the country's tax system, to DRM efforts, sustainable development and international and regional commitments such as the UN 2030 Agenda and AU Agenda 2063. However, most of these countries have anti-tax evasion and tax avoidance provisions in their domestic legislation that address most of the components of TIFFs despite the range of differences that exist in the countries' domestic provisions and their level of enforcement.

Further, most of these countries have anti-money laundering Acts (i.e. AMLAs) which are confined to cross-border transfer of proceeds derived from criminal activities. The AMLA designate tax evasion as a predicate crime for money-laundering and some of the ATI part-

79 They are Burkina Faso, Kenya, Liberia, Madagascar, Malawi, Namibia, Pakistan, Paraguay, Rwanda, Senegal, Sierra Leone, Tanzania, and Uganda.

80 For instance, Malawi formulated its first DRM Strategy 2021 -2026. See Malawi, Domestic Revenue Mobilization Strategy 2021 – 2026 :Building a Tax Compliant Culture for National Development, available at https://www.mra.mw/assets/upload/downloads/Domestic_Resource_Mobilization_Strategy.pdf (accessed 20 Jan. 2023).

ner countries mentioned that they have already incorporated tax evasion within their national risk assessment strategies against money laundering and they employ such strategies in combatting the illegal wing of TIFFs.[81]

Most of the countries mentioned that they have TP regulations either as part of their Income Tax Act (ITA)[82] or in their ITA and supplemented by other instruments (i.e. regulations, guidelines and/or notes).[83] Some of the TP regulations of these countries require, among others, disclosure of TP policy and submission of TP documentation to tax authorities including local files, master files and country-by-country reporting (CbCR) while others only require reporting of some of these documents. However, implementation of TP regulations varies from country to country and that relates to the level of institutional set-up, technological structure, access to databases for TP analysis and number and competence of expertise assigned to implement the TP regulations.

ATI partner countries have been taking measures to strengthen their legal (and institutional) framework on transparency and EOI to combatting TIFFs effectively. The measures taken in relation to the legal framework to combat TIFFs include strengthening national legislation and regulations with a view to establishing or enhancing access to tax-related information and EOI mechanisms as well as introducing greater transparency in relation to beneficial ownership (BO) information of entities.[84] Such measures were taken mainly through legal reforms in relation to EOI and BO information requirements in line with countries international commitment including DTAAs, TIEAs, MAATM MC and the Global Forum.

Moreover, some of the responding ATI partner countries have made efforts to counter trade mis-invoicing by introducing tracking and tracing mechanism into their tax systems in order to properly assess actual transactions within their territories as well as imports and exports.[85] Most countries use the Automated System for Customs Data (ASYCUDA), which is an effective and efficient computerised system for customs procedures. Some countries are also underway to make their customs procedures sophisticated and efficient in fighting against trade mis-invoicing.[86]

2.2.2. Institutional framework

Most of the responding ATI partner countries have institutional set-ups to enforce anti-tax abuse provisions even though there are differences regarding the institutions involved in the prevention, detection, investigation, prosecution, and recovery of assets linked to tax evasion. Some countries give almost all of the aforementioned responsibilities to their tax

81 For instance, Burkina Faso, Indonesia, Kenya, Liberia, Namibia, Pakistan, Paraguay, and Sierra Leone indicated that they incorporate tax evasion within the scope of national risk assessment strategies against money laundering and tackle the problem accordingly.

82 Such as Pakistan and Senegal.

83 Such as Burkina Faso, Indonesia, Liberia, Namibia, Paraguay, Rwanda, Sierra Leone, and Tanzania.

84 Such as Burkina Faso, Kenya, Rwanda, Pakistan, Paraguay, and Uganda,

85 Such as Kenya, Pakistan. Rwanda, Tanzania, and Uganda, which also have tracking and tracing mechanisms in their domestic tax systems.

86 Indonesia, Pakistan, and Rwanda are striving to enhance the capacity of their customs procedures.

authorities while others assign the responsibilities to the tax authorities[87] and other institutions such as the Ministry of Justice or Office of Authority General, Public Prosecution Authority, Public Investigation Bureau, and Financial Intelligence Unit.[88]

Several ATI partner countries do not have a unit dedicated to TP issues.[89] In most cases, various units or departments within tax authorities are engaged on TP issues and this may create a leeway for transfer mispricing. Some of the responding countries, however, have units that deal with TP issues along with other aspects such as an International Taxation Unit (ITU)[90] and/or Large Taxpayers Office.[91] Some of the ATI partner countries are also currently underway setting-up a dedicated TP unit.[92] In relation to EOI units, countries' experiences are mostly similar to the situation related to TP units. Some countries have an EOI staff within the ITU (which also deals with TP and tax-treaty related issues)[93] or Business Support Department[94] and in some cases the tasks regarding EOI issues are dealt with by different units in a more decentralised manner than in the case of TP issues.[95] However, most of the responding countries mentioned that they have limitations on the enforcement of EOI options due to several reasons including a limited tax treaty network and/or no bilateral or multilateral EOI agreements or even if there are such agreements in place, human and technological capacity constraints hinder them from taking advantage of EOI options.

It is noteworthy that most ATI partner countries' responses in relation to trade mis-invoicing do not correspond to the prevalence and magnitude of the negative effect trade mis-invoicing on the countries' tax system and DRM efforts.

2.2.3. Interagency cooperation

Combatting TIFFs starts at home and a range of practical measures exist that countries can take to tackle TIFFs. Almost all the responding ATI partner countries mentioned that there are different government institutions that are working closely with tax authorities in combatting TIFFs including, among others, the FIU, central banks, national investigation authorities, public prosecution authorities, and the Office of the Registrar General (ORG). However, most responding ATI partner countries mention that they have interagency cooperation on an ad hoc basis on some tax-related issues but lack a consolidated approach. As a result, in most countries, the actual level of cooperation remains low.

Most countries either require or permit their tax administrations to report and share information with the authorities responsible for investigating serious financial crimes, while oth-

87 These include Kenya (to Kenya Revenue Authority) and Pakistan (to the Federal Revenue Bureau).
88 Burkina Faso, Indonesia, Rwanda, Tanzania, and Uganda.
89 For instance, Burkina Faso indicated that it does not have a dedicated TP Unit and specialised staff on TP matters.
90 Liberia, Madagascar, Rwanda, Tanzania, and Sierra Leone.
91 Madagascar and Malawi.
92 Such as Madagascar and Paraguay.
93 Kenya (also has a competent authority for EOI including for AEOI with the ITU), Rwanda, Senegal, and Tanzania. Madagascar has an EOI Service responsible for EOI with other states.
94 In the case of Malawi.
95 Such as Namibia and Sierra Leone.

er countries either place some restrictions or does not put any means in place for sharing information. However, the countries that are members of the FATF and/or which have an AMLA in place have an interagency cooperation framework for countering money-laundering and financing terrorism. These countries also address tax evasion-related TIFFs through national risk assessment strategies on money-laundering.[96] The interagency cooperation against money-laundering that is already in place in some of the ATI partner countries can pave the way or serve as a starting point to have a similar framework against TIFFs.

2.2.4. Capacity building

The ATI partner countries have mentioned that they have several initiatives geared toward enhancing their human and technological capacities. However, almost all of them underlined that they need adequate capacity building in respect of tax-related auditing, assessment, investigation, prosecution, and negotiations, as well as in respect of an adequate infrastructure for digitalisation, cooperation arrangements and litigation including on TP cases. They emphasise that audit units should be trained in international accounting standards and auditing techniques so that they can audit MNEs and deal with their aggressive tax planning and TIFFs. Some countries also mention that they need specialised training on how to detect, investigate, and measure the prevalence of TIFFs as well as to calculate the revenue loss through TIFFs. In short, countries indicate the need for training on TP, EOI, tax treaties, and assessment and measurement of TIFFs.

2.2.5. International cooperation

It is encouraging that several ATI partner countries have DTAAs, and are either signatories to international forums such as the Global Forum (all except seven ATI partner countries are members of the Global Forum)[97] or signatories to international instruments, particularly on EOI such as the MAATM MC (so far, 16 out of the 25 ATI partner countries are signatories to the MAATM MC).[98] Some of them have already committed themselves to AEOI.[99] Furthermore, some ATI partner countries joined the OECD/G20 BEPS Inclusive Framework (IF), committed to implementing recommendations on BEPS and to adopt measures, and have ratified the MLI.[100]

96 These include Burkina Faso, Indonesia, Kenya, Liberia, Namibia, Pakistan, Paraguay, and Sierra Leone.

97 ATI partner countries that are non-members of the Global Forum are Afghanistan, Ethiopia, Gambia, Malawi, Nepal, Sierra Leone and the Solomon Islands.

98 Benin, Burkina Faso, Cameroon, Georgia, Ghana, Indonesia, Kenya, Liberia, Mongolia, Namibia, Pakistan, Paraguay, Philippines, Rwanda, Senegal and Uganda.

99 Such as Indonesia, Pakistan, Rwanda and Uganda.

100 Benin, Burkina Faso, Cameroon, Georgia, Indonesia, Kenya, Liberia, Mongolia, Namibia, Pakistan, Paraguay, Senegal and Sierra Leone are members of the IF. Burkina Faso, Cameroon, Georgia, Indonesia, Pakistan and Senegal ratified the MLI. Further, Kenya, Mongolia and Namibia already signed the MLI.

2.3. Interim conclusion

Most ATI partner countries have formulated or are developing DRM strategies, national development plans or economic policies with long, medium and short term revenue targets.[101] Even though such strategies, plans or policies contain global, regional and national situation analysis including causes of revenue losses and potential as well as factual threats against revenue mobilisation efforts, none of the responding ATI partner countries mentioned a specific policy or strategy that refers to, or deals with, TIFFs as a threat to their DRM efforts and developments. Most countries underlined that policies and strategies to combat TIFFs stem from existing tax legislation and AMLAs which deal with almost all the components of TIFFs in the form of tax evasion, tax avoidance, transfer mispricing and trade mis-invoicing. The same would apply to institutional set-ups and practical operations.

The initiatives that have been taken (and continue to be taken) by ATI partner countries on TP, transparency and EOI as well as commitments to international cooperation are encouraging, despite the range of differences that exist in the countries' domestic provisions and their level of enforcement. It is worth mentioning that trade mis-invoicing and its negative effect is not well addressed.

The level of interagency cooperation in combatting TIFFs is low as compared to the consolidation in combating money laundering.

Most countries have indicated that they have human and technological capacity limitations as the main challenges in tackling TIFFs despite the support of different international organisations and donor countries.

101 For instance, Malawi formulated its first DRM Strategy 2021 -2026. See Malawi, Domestic Revenue Mobilization Strategy 2021 – 2026 :Building a Tax Compliant Culture for National Development, available at https://www.mra.mw/assets/upload/downloads/Domestic_Resource_Mobilization_Strategy.pdf (accessed 20 Jan. 2023).

3

Further research on selected ATI partner countries' initiatives against TIFFs

3.1. Indonesia

3.1.1. Introduction

Indonesia is the largest economy in Southeast Asia and the world's fourth most populous nation.[102] Indonesia's economic planning follows a 20-year development plan, spanning from 2005 to 2025.[103] It is segmented into 5-year medium-term development plans, each with different priorities. The issue of TIFFs has been considered a necessary and crucial matter to overcome the challenges of a low ratio of tax to GDP.[104] Studies show that tax evasion and tax avoidance have contributed to Indonesia's low tax revenue.[105] For example, a GFI report (2021) "The Macao Money Machine: Profit Shifting and Tax Leakage in Indonesia's Pulp Exports" indicated that "between 2007 and 2018, China imported over 2 million tons of dissolving pulp from Indonesia. ... [whereas] Indonesia only exported to China approximately 400,000 tons of the same product during the same period ..."[106] resulting in an outflow of substantial taxable profits generated within Indonesia.

102 https://www.worldbank.org/en/country/indonesia/overview (accessed 7 Nov. 2022).

103 Id.

104 Prakarsa, Highting Illicit Financial Flow of Indonesia's Top Six Export Commodities: A policy brief based on a report titled "Exposing illicit financial flow in Indonesia: The scale and the potential of tax revenue loss from the top six export commodities", https://theprakarsa.org/highlighting-illicit-financial-flow-of-indonesias-top-six-export-commodities/ (published 12 Nov. 2019) (accessed 7 Nov. 2022).

105 S. Safuan et al., Eradicating tax evasion in Indonesia through financial sector development, (Cogent Economic and Finance 2022), available at https://www.tandfonline.com/doi/full/10.1080/23322039.2022.2114167 (accessed 20 Dec. 2022).

106 GFI, The Macao Money Machine: Profit Shifting and Tax Leakage in Indonesia's Pulp Exports, https://gfintegrity.org/report/the-macao-money-machine-profit-shifting-and-tax-leakage-in-indonesias-pulp-exports/ (accessed 7 Nov. 2022); the comparison is based on China's customs data as reported to the United Nations Commodity Trade Statistics Database and the official trade data by Indonesia's Central Statistics Bureau.

Figure 2: Dissolving pulp sent from Indonesia to China, 2007 -2018[107]

Sources: Indonesia data for HS Code 470200 from Badan Pusat Statisktik; China data for HF Code 470200 from UN Comtrade.

According to a GFI report (2019) on Indonesia, trade mis-invoicing caused estimated revenue losses of USD 6.5. billion (i.e. USD 3.9 billion due to export mis-invoicing and USD 2.6 billion due to import mis-invoicing) for the government of Indonesia in 2016. [108] A TJN report (2021) on Indonesia estimates that the country lost around USD 2.3 billion in tax every year to global tax abuse which is equivalent to 2.2% of the country's tax revenue (i.e. USD 104 billion in 2021).[109] Therefore, TIFFs are pernicious drains and undermines Indonesia's DRM efforts. The Indonesian government has also made significant attempts to improve its tax system in order to tackle TIFFs and increase tax collection.[110] The following assessment has been carried out based on written responses submitted by Indonesia's Directorate General

107 This figure is taken from GFI, The Macao Money Machine: Profit Shifting and Tax Leakage in Indonesia's Pulp Exports, https://gfintegrity.org/report/the-macao-money-machine-profit-shifting-and-tax-leakage-in-indonesias-pulp-exports/ (accessed 7 Nov. 2022).

108 GFI, Indonesia: Potential Revenue Losses Associated with Trade Mis-invoicing, (GFI 2019) https://gfintegrity.org/report/indonesia-potential-revenue-losses-associated-with-trade-misinvoicing/ (accessed 12 Dec. 2022); GFI et al., Profit Shifting Case in Indonesia Highlights Need for Improved Tax Collection, (GFI 2021), https://gfintegrity.org/profit-shifting-case-in-indonesia-highlights-need-for-improved-tax-collection/ (accessed 12 Dec. 2022).

109 https://taxjustice.net/country-profiles/indonesia/ (accessed 12 Dec. 2022).

110 Safuan, supra n. 105.

Taxes (DGT) to the detailed interview questions and by reviewing Indonesia's legislation and relevant reports that are officially available.

3.1.2. Policies and strategies on TIFFs

Currently there is no specific policy or strategy that refers to, or deals with, TIFFs. However, Indonesia uses the law on Prevention and Eradication of Money Laundering[111] and regulations concerning Reporting Parties in Prevention and Eradication of Money Laundering[112] as a tool to combat TIFFs.

Indonesia employs a high-level risk grouping tax crime strategy based on the type of crime, namely misuse of tax invoices and withholding tax evasion; actor profile (beneficial owner); reporting parties, including tax crimes that were indicated by the reporting party in the form of property companies, banks and financial institutions; and suspicious transactions that have patterns, such as the purchase of apartments, deposits to third parties, the creation of a new business, which indicates a criminal act of money laundering. The strategy is implemented into the National Risk Assessment (NRA) which is carried out annually by a Joint Team of DGT as a member and chaired by the Head of Financial Transaction Reporting and Analysis Centre (*Pusat Pelaporan Dan Analisis Transaksi Keuangan* - PPATK). The Joint Team aims to identify the national risk of money laundering but there is no such strategy for identifying TIFFs.

Indonesia adopted the policy recommendations by OECD on Ten Global Principles in Fighting Tax Crimes, the Global Forum and the FATF. Legislation is in place to implement these recommendations to criminalise tax offences with the help of adequate investigative power and resources for tax crime investigation.

3.1.3. Tax abuse (evasion and avoidance)

Legal framework

Violations of tax laws are criminalised under the tax code i.e. the General Tax Provisions and Procedures Law (*Ketentuan Umum dan Tata Cara Perpajakan* - KUP Law). The tax crimes or offences covered by the KUP Law include, among other offences:

- failure to register for a Taxpayer Identification Number (TIN) or to register a business to be confirmed as a taxable person for VAT purposes;
- misuse or use without authority of a TIN, filing a false or incomplete tax return or information, or using forged accounts or documents;
- failure to maintain books or records in Indonesia; and
- failure to remit tax already withheld or collected or issuing or using tax invoices that are not based on actual transactions.

111 Law 8 of 2020.
112 Regulations 43 of 2015.

Furthermore, any person who is legally obliged to provide information or evidence requested by the tax authorities (i.e. DGT) but deliberately fails to do so or provides false information or evidence is punishable by imprisonment and a monetary fine. The punishment includes imprisonment and monetary fines. The KUP Law's criminal sanctions and punitive measures apply to individuals and legal persons.

Indonesian tax legislation incorporates the following anti-tax avoidance measures.

- BO;
- limitations on benefits (LoB);
- general anti-avoidance rules (GAARs);
- thin capitalisation / limitation on deduction of interest;
- substance over form; and
- controlled foreign company (CFC) rules.

Currently, Indonesia has 71 DTAAs, of which 70 DTAAs contain anti-abuse provisions.

Institutional set-up

There are several institutions involved in countering tax evasion such as:

- the DGT;
- the FIU; and
- the Public Prosecution Services of the Republic of Indonesia.

These three institutions have more than 50,000 staff combined. The DGT has special authority to handle tax crimes as stipulated in Article 44 of the KUP Law.[113]

Enforcement

The DGT is responsible for preventing, detecting, and investigating tax crimes while the Public Prosecution Services is in charge of asset recovery. The FIU also engages in detecting tax crimes. These institutions are able to execute their responsibilities effectively.

On average, annually, 17 tax crime investigation cases were completed by the DGT and an average of eight cases resulted in prosecutions that were completed in court.

Successes and challenges

The DGT considers that the current legal framework on tackling TIFFs is quite effective.

113 Civil Servant Investigators (PPNS), with a staff of around 1000 persons, within the DGT are mandated by the Director General of Taxes to handle tax crimes. The PPNS are provided with expertise through education and training lasting 2 months by police investigators.

However, it is mentioned that to improve the effectiveness of tackling TIFFs, the FIU needs a full support by the top-level stakeholders.

3.1.4. Transfer (mis)pricing

Legal framework

Indonesia has TP-related provisions in different tax laws including in the ITA (Law No. 7 of 1983 as amended by Law No. 7 of 2021) and in the VAT Act (Law No. 8 of 1983 as amended by Law No.7 of 2021). The TP regulations vary depending on the administrative nature of the issue. For instance, the general application of the arm's length principle (ALP) is stipulated in the Minister of Finance Regulations (MoF Reg.) No. 22 of 2022 and the obligation to prepare TP Documentation and CbCR is stipulated in the MoF Reg. No. 213 of 2016.[114]

The TP regulations in different tax laws impose general administrative compliance rules and depending on whether taxpayers meet the respective regulatory thresholds, they have to submit TP documentations (i.e. Master File and Local File) and CbCR as part of their annual CIT returns.

However, there is no set of specific TP penalties owing to its nature of being part of the general tax principles. Therefore, any violations against TP rules will be subject to the penalties based on the categories of the violations stipulated in the KUP Law.

Institutional set-up - TP Unit

The DGT has several structural units that are engaged in TP issues, such as the Sub-Directorate of Special Transactions (*Subdit Transus*), Sub-Directorate of Prevention and Settlement of International Taxation Disputes (*Subdit PPSPI*) and Sub-Directorate of Data Analysis (*Subdit Analisis Data*). *Subdit Transus* is in charge of formulating policies and strategies related to TP audits, whereas Subdit PPSPI handles the implementation of advance pricing agreement (APA) and mutual agreement procedure (MAP) mechanisms. In the meantime, Subdit Analisis data is engaged in the processing of TP and CbCR data.

At the level of the tax units, the handling of TP issues is part of the initiative strategies carried out by the officials for the purpose of supervisions and assessments. In order to support these functions, the DGT has established a project called Transfer Pricing Knowledge Centre (TPKC) since 2020. The Centre's functions include coordinating, assisting and building the capacity of the tax officials in handling TP cases at the regional office level.

Concerning the internal database for comparability analyses and benchmarking transfer prices, DGT relies on commodity standard price data issued by the competent government agencies as the reference for examining the price of commodities transacted by related

114 The DGT believes that, as a member of the Inclusive Framework, Indonesia's transfer pricing regulations are designed to confirm with the BEPS Actions 8-10 and 13 as well as the OECD Transfer Pricing Guidelines.

parties (typically useful for the Comparable Uncontrolled Price (CUP) method). In addition, the DGT also harnesses the financial information of go-public corporations published on the Indonesian Stock Exchange as the benchmark for performing comparability analysis.

With regard to external databases, the DGT uses commercial databases of Bloomberg, ORBIS, and TP Catalyst.

Enforcement

Since the TP system is designed to tackle profit shifting and base erosion caused by non-arm's length price setting of controlled cross-border transactions, its effectiveness in specially addressing TIFFs is difficult to assess.

Successes and challenges

Despite winning several court cases related to intra-group services, cost allocations and intangibles, the DGT also lost more cases in tax courts related to TP cases than it won. This reflects the challenges in implementing TP regulations, including understanding the regulations and guidelines, implementing the regulations as well as the availability of comparable data and information.

Through the Directorate of International Taxation, the DGT has been regularly organising training and workshops to enhance the capacity of its staff in dealing with TP matters. With regard to the data and information collection aspects, the DGT has been continuously improving the capacity of its internal system in generating reliable data and information entailed for TP analysis. Additionally, the DGT also optimises the use of the EOI instrument to obtain valid data and information related to the pricing of cross-border controlled transactions.

The EOIR needs to be performed frequently to increase the validity of TP adjustments. Additionally, refining current TP regulations, notably on the aspects of TP audit and enforcement targeting vulnerable sectors (e.g. extractive sectors), is also crucial to improve the effectiveness of the TP system.

3.1.5. Trade mis-invoicing

Legal framework

The rules regarding (trade) mis-invoicing are stipulated in Article 39A of the General Tax Provision and Procedures Law. Any person who deliberately:

- issues and/or uses tax invoices, WHT invoices, and/or tax payment slips that are not based on an actual transaction; or
- issues tax invoices before being established as a taxable person,

will be penalised by imprisonment for two to six years and with a fine equal to two to six times the amount of tax stated in the tax invoice, tax withheld invoice, and/or tax payment slip.

Institutional set-up

The DGT is responsible for tackling trade mis-invoicing and it has generally more than 500 staff members.

Enforcement

The DST considers that implementation of the mis-invoicing provisions of Article 39A of the KUP Law is effective. The KUP Law has been refined several times to enhance its effectiveness.[115]

Success and challenges

To improve the effectiveness of this regime, there is a need to increase human resource quality, improve regulations and strengthen the synergy between law enforcement officers.

3.1.6. Transparency and exchange of information

Legal framework

Legislation regulating the procedure to obtain information and/or documents on tax matters includes the KUP Law and the Stipulation of Government Regulation in Lieu of Law concerning Access to Financial Information for Tax Purposes. These laws authorise the DGT to have access information on tax matters from any person including from banks and other financial institutions. The laws also deal with containing and exchanging information with other countries.

Currently, Indonesia has 71 DTAAs of which 69 contain EOI provisions. EOI provisions are often in line with the current international standards as included in the OECD and UN Model Conventions.

In addition to the 71 DTAAs, Indonesia has other international agreements, commitments, and engagements with regards to EOI in tax matters including the MAATM MC;[116] the Multilateral Competent Authority Agreement (MCAA)[117] on Common Reporting Standards (CRS) and CbCR; TIEAs; Bilateral Competent Authority Agreement (BCAA) on AEOI and

115 There are also other rules that support its implementation, for example the Supreme Court Regulation 13/2016 and Supreme Court Circular 4/2021.

116 Indonesia submitted its ratification instrument in 2014.

117 In June 2015, Indonesia signed the MCAA, in which Annex F stipulated the commitment to implement AEOI by September 2018. Since 2018 Indonesia has exchanged financial information with partner jurisdictions four times.

CbCR; Memorandum of Understanding (MoU) on AEOI on withholding taxes; and it is a member of the Global Forum.[118]

Institutional set-up - EOI Unit

The DGT is responsible for all EOI matters. The Director of International Taxation within the DGT acts as the competent authority for EOI purposes. Therefore, the EOI unit under Directorate of International Taxation is responsible for EOI for tax purposes.

The EOI unit has a staff of 30 employees. The education level ranges from diploma to doctorate. The level of experience in handling EOI issues is also varied, ranging from six months to five years. The required IT infrastructure for EOI is in place.

Enforcement

In the case of inbound EOIR, the EOI unit administers the request. This may involve other units in the DGT to collect the required information. Upon successful collection of the information the Competent Authority (i.e. Director of International Taxation) sends the responses to the requesting jurisdictions via regular mail or encrypted e-mail. For AEOI on financial information (CRS), financial institutions submit their reports to the DGT on a regular basis. Upon successful validation and packaging, the competent authority forwards the reports to respective partner jurisdictions via the common transmission system (CTS). In the case of inbound spontaneous EOI, the competent authority forwards the data to other units in the DGT.

In the case of outbound EOIR, the EOI unit ensures that the response received from partner countries has met the international standard. Subsequently, the EOI Unit translates and forwards the response to the requesting units in the DGT via regular mail. For AEOI on financial information (CRS), the EOI unit collects the data from the CTS. Upon successful validation and decryption, followed by the matching process, the competent authority forwards the data received to other units for further use. In the case of outbound spontaneous EOI, the competent authority gathers and sends the information to the competent authority of partner jurisdictions via regular mail or encrypted e-mail.

Successes and challenges

EOI has been an effective tool to improve tax compliance in Indonesia. All information gathered through EOI options has been beneficial in assisting the DGT units to conduct tax examinations and tax compliance assessments and boost Indonesian tax revenue and tackle tax avoidance schemes.

118 Joined the Global Forum in September 2014. Indonesia hosted the declaration of the Asia Initiative, known as the Bali Declaration on 14 July 2022 and it was also the first country to chair the Asia Initiative.

3.1.7. Interagency cooperation

Other government agencies cooperate with the DGT. For example, the FIU provides information to assist the analysis of suspicious financial transactions and transactions tracking with a follow the money approach in relation to indications of money laundering in TIFFs.

The Ministry of Law and Human Rights is responsible for online corporate registries requiring ultimate BO information as part of a registration process including from all government contract bidders and provides data regarding registered legal entities and BO information on legal entities.

There is a National Coordination Committee for Prevention and the Eradication of Money Laundering Offenses. However, there is no framework or systematic interagency cooperation against TIFFs except for the cooperation and national committee on money laundering.

3.1.8. Capacity building

Indonesia has undertaken different capacity building initiatives with various stakeholders and development parties, including Japan International Cooperation Agency (JICA), OECD, Australian Tax Office (ATO), the Ministry of Foreign Affairs of the Netherlands, PPATK, Network of Tax Organisations (NTO) and the Association of Tax Authorities of Islamic Countries (ATAIC). The capacity building initiatives include an in-house training, workshops, conferences and reviews covering various tax issues.[119]

Currently there is no employee retention mechanism in place. However, there is a succession mechanism through assignment and training.

3.1.9. Stakeholders' engagement

The FIU (internal) and the FATF (external) are the two stakeholders closely working with the DGT in tackling TIFFs.

Their roles are the following:

- The FIU requests and obtains data and information from government agencies and/or private institutions and supplies the data and information to other authorised institutions including to DGT.

119 Such as the typology of tax crimes, tax collection, investigation, and compliance, tax crime investigation, investigative technique for the effective use of banking information, joint tax project on serious financial crime, tax and crime illicit financial flows and the impact on tax administration activities and best practices. Law enforcement, tax treaties interpretation issues, and building stronger partnerships to fight tax-related illicit financial flows.

- The FATF sets international standards that aim to prevent illegal activities and the harm they cause to society. The FATF also monitor the FIU's progress on combatting TIFFs on a routine basis.

3.1.10. Overall assessment

Successes and challenges

Indonesia's success stories include the implementation of EOI options and active engagement on international forums resulting in improvements in tax examinations, tax compliance and compliance assessments. Information received through EOI options helps Indonesia boost its tax revenue and counter tax avoidance schemes by detecting noncompliant taxpayers and discovering hidden offshore assets and unreported income. Similarly, there is a promising progress in the implementation of TP regulations resulting in increasing tax revenues through TP adjustment and litigations. TP analysis and litigations have also increased tax compliance.

However, there are some challenges in implementing TP regulations as well as in analysing some information. For instance, the interpretation of some data and information between the FIU and the DGT may vary sometimes. The lesson learnt from such differences in the interpretation of data and information is that the DGT should always cleanse the data and do the rework if needed. In this way, the DGT's data validity will be enhanced.

3.2. Kenya

3.2.1. Introduction

Studies indicate that, in Kenya, TIFFs occur mainly through trade mis-invoicing, trade in contraband goods and transfer mispricing contributing to reduced tax revenues, increased budget deficits and severe implications for Kenya's economic, social and political development agenda.[120] For instance, a GFI report (2014) "Hiding in Plain Sight: Tarde Mis-invoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011" estimates that the country lost around USD 13.58 billion in revenue through trade mis-invoicing (i.e. USD 9.64 billion through under-invoicing of exports and USD 3.94 billion through import over-invoicing).[121] The report also estimates that the annual revenue loss to IFFs from trade mis-invoicing amounted to roughly 7.76% of Kenya's GDP and 288.63 % of Kenya's annual ODA. For instance, according to a data from the Kenya Revenue Authority (KRA), out of 759,164 companies registered in Kenya only 84,424 firms declared and paid corporate tax in the tax year 2021/2022. [122] As a result, around 84% of companies operating in Kenya did not pay corporate tax for the year ended June 2022 and the KRA is pursuing suspected tax evaders or reported losses as a tax avoidance strategy.[123]The KRA also estimates that the tax revenue loss through usage of fake invoices issued to evade taxes and missing trade scheme was worth Kenyan Shilling (KES) 97 billion between 2015 and 2016.[124] Therefore, there is no doubt that IFFs/TIFFs constitutes a major negative impact to the DRM efforts. The Kenyan government and the KRA have used a lot of resources and made efforts to combat TIFFs, reduce tax losses and maximise revenue collection.[125]

The following assessment has been carried out based on written responses submitted by KRA tax officials to a questionnaire and detailed interview questions as well as by reviewing Kenya legislation and documents that are publicly available.

3.2.2. Policies and strategies on TIFFs

Currently there is no policy or strategy that deals with the threat of TIFFs to the country's DRM and development. However, the existing legal framework addresses the components of TIFFs in terms of tax evasion and tax avoidance including transfer mispricing and trade mis-invoicing.

120 T. Barasa, Illicit Financial Flows in Kenya: Mapping of the Literature and Synthesis of the Evidence, Partnership for African Social and Governance Research (PASGR 2018), https://www.pasgr.org/wp-content/uploads/2018/09/Kenya-Illicit-Financial-Flows-Report.pdf (accessed 28 Nov. 2022).

121 Baker, supra n. 1.

122 https://www.kra.go.ke/news-center/blog/1869-tax-avoidance-and-tax-evasion-a-tale-of-two-errors (accessed 20 Dec. 2022). Only 84,424 firms declared and paid corporate tax out of 759,164 companies registered in Kenya.

123 Id.

124 KRA, Tax Matters- Understanding tax Evasion, (KRA 2022), available at https://kra.go.ke/images/publications/TaxMatters-Bulletin-Tax-Evasion-Edition.pdf (accessed 20 Dec. 2022)

125 https://www.kra.go.ke/news-center/blog/1869-tax-avoidance-and-tax-evasion-a-tale-of-two-errors (accessed 20 Dec. 2022).

Kenya has adopted several policy recommendations against IFFs/TIFFs[126] which include, among others, adoption of the OECD's Ten Global Principles for Fighting Tax Crime including the legal, institutional, administrative and operational aspects,[127] joining the Global Forum and Africa Initiative, and implementation of the EOIR standard and commitment to implement the AEOI standard to tackle TIFFs and the whole of government approaches in tackling IFFs. The two EOI standards are also complemented by BEPS-related transparency minimum standards (i.e. Action 5: EOI on tax rulings and Action 13: CbCR).

3.2.3. Tax abuse (evasion and avoidance)

Legal framework

Violations of tax law are criminalised under the tax code. Part XII of the ITA stipulates the following offences:

- *Failure to comply with notice* (*Section 109 of the ITA*) including failure to account for tax, or furnish a tax return or give a certificate, to keep records, books or accounts, or to produce a document for the examination by the tax authorities as required by the ITA.
- *Incorrect income return* (*Section 110 of the ITA*) which includes making an incorrect return of income by omitting or understating any income which should have been stated in the tax return, or giving incorrect information in relation to any matter in relation to a claim for a personal relief or affecting the liability to tax of another person.
- *Fraudulent return* (*Section 111 of the ITA*) which includes making a fraudulent claim for the repayment of tax or with the intent to evade tax or making a false return of income or preparing or maintaining or authorising the preparation or maintenance of false books of accounts or other records, or makes use of fraud, or authorises the use of fraud.

In the case of offences committed by corporate bodies, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate or was acting in that capacity will be guilty of the offence unless he proves otherwise.[128]

The ITA provides for the general and specific anti-abuse rules. Section 23 of the ITA provides the "Main Purpose Test" which allows the Commissioner of the KRA to make adjustments to, or counter, any transactions effected to avoid or reduce tax liabilities.

Section 41(5) of the ITA also provides a simplified limitation on benefits (LOB) rule based on ownership test mainly to limit benefits provided in DTAAs that Kenya has signed. Accordingly, it has been applied to restrict benefits in a few DTAAs.

126 The policy recommendations against TIFFs that will be referred to throughout this report include the ATI Declaration 2025, OECD Ten global principles in fighting tax crime, Global Financial Integrity (GFI) reports, FACTI panel reports, AU/UNECA HLP report of 2015, UNCTAD reports, and FATF Recommendations on Combating Money Laundering and Financing of Terrorism and Proliferation.

127 KRA, supra n. 124, at p. 3.

128 Section 116 of the ITA

Kenya has 15 DTAAs in force and 3 of them have anti-abuse treaty provisions. Kenya has also signed the MLI and it may update or modify the DTAAs with anti-treaty abuse provisions upon ratification and entry into force.

Institutional set-up

The KRA has a mandate for ensuring compliance with all tax laws. In the process of enforcing compliance, it prevents, detects, investigates, and prosecutes cases of tax evasion and tax fraud and recover assets related to tax evasion and avoidance practices.

3.2.4. Transfer (mis)pricing

Legal framework

The ITA contains TP rules. The Finance Act (2022) introduced some amendments to the ITA and introduced a requirement to file a CbCR, Master File and a Local File with the KRA. The TP rules apply general penalties prescribed in the Tax Procedures Act (TPA).

Institutional set-up – TP Unit

There is a separate office set up to handle all TP audits. Its staff is continuously trained.

Enforcement

The TP rules that require the CbCR came into force in June 2022. The KRA is still implementing this requirement. The CbCR are not yet due and therefore enforcement measures have not yet been imposed.

3.2.5. Trade mis-invoicing

The KRA has adopted the Common Harmonisation Commodity Descriptions and Coding System (HS Codes) which provides common global understating of classification of exports to avoid ambiguities in pricing.

3.2.6. Transparency and exchange of information

Legal framework

Kenya introduced legislation on BO through the Companies Act, requiring companies to declare their BO details. The BO requirement goes a long way in tracing the actual owners and beneficiaries to enhance transparency.

Domestically the KRA obtains information on the basis of Sections 58 – 60 of the ITA and Sections 6 and 102 of the TPA which allow KRA to request information for tax purposes. The KRA also uses already collated information from its tax system and various databases.

The ITA and TPA allow the KRA to exchange information with other jurisdictions as per international agreements that Kenya has ratified. In 2021, Kenya enacted the principle law for implementation of the AEOI/ CRS Standard. Its implementation commenced in 2022 with the first exchanges of AEOI data expected to take place from September 2023.

Currently, Kenya has 15 bilateral DTAAs in force and they have provisions on EOIR and only 8 out of the 15 DTAAs have current international standards as in the latest OECD and UN Model Conventions. Kenya is a signatory to the MAATM MC, which enables EOI with over 140 jurisdictions. Therefore, the MAATM MC to a large extent addresses the gap on EOI in the DTAAs. In 2022, Kenya became a signatory to the MCAA on the automatic exchange of CbCR (CbC-MCAA).

Institutional set-up - EOI Unit

The KRA has a unit that handles international EOI. The EOI Unit is in the Competent Authority Office under the Intelligence and Strategic Operations Department. The EOI Unit has 10 staff who are involved in the process of inbound and outbound request for information. There are KRA stakeholders who provide third-party data such as business registration services, financial reporting centre, financial institutions i.e. banks etc, and KRA-registered taxpayers holding this information.

Enforcement

The process of collecting and providing information is governed by the two Global Forum Tax Transparency Standards i.e. the EOIR and AEOI.

The inbound process involves the EOI Unit receiving a request from another state and requesting for information not already in the KRA systems from other stakeholders and third-party information providers and receiving information, logging it, collating this information after verifying it and encrypting it before submission to the other jurisdictions.

The outbound process involves receiving the outbound request from KRA internal stakeholders i.e. auditors/investigators, logging in the request, validating the request based on a stipulated criterion, encrypting it and sending it to another state. Once the feedback is received, it is logged in and validated by the EOI Unit and then submitted to the competent authority.[129]

129 The respective case officer then decrypts the information, collates and disseminates the information to the auditor or investigator, either via e-mail or printed copies while observing strict confidentiality protocols.

Successes and challenges

Kenya has a vibrant international cooperation in tax matters with other states, meetings/forums with decision makers and partners e.g. the Africa Initiative, the Global Forum steering committee, the Global Forum Plenary meetings, Peer Review Groups, UN Tax Committee on Tax Transparency and Cooperation, UNODC Follow-the-Money Forums and the Global Forum Working Groups. The KRA has been implementing the EOIR since 2018. To date, the KRA has sent out 385 requests for information and received 122 requests from partner jurisdictions.

The KRA has been able to identify supplementary revenue as a result of EOI. The revenue implications of the information that KRA received from other jurisdictions has been an approximate of KES 1.5 billion. The EOI instruments encourages for standardised institutional reforms, provide legally binding frameworks for EOI for tax purposes, ensure that the interests of partner states are taken into account and peer learning.

The KRA is currently using a manual tracking tool for the requests. The lesson learnt is that manual nature of handing EOI can be prohibitive for effective exchange especially when tracking request.

However, there is a plan to procure an IT infrastructure to accommodate the growing use of EOI and its commitment to implement the AEOI standards.

3.2.7. Interagency cooperation

There is a multiagency collaboration in handling TIFFs cases which includes the KRA, Ethics and Anti-corruption Commission (EACC) and the national police.

3.2.8. Capacity building

Staff representatives from the various institutions are well trained. The training includes Train the Trainer, UNODC follow-the-money training, and assistance provided under the Tax Inspectors Without Borders (TIWB)[130] programme primarily for TP challenges.

3.2.9. Stakeholders' engagement

There are various internal and external stakeholders involved in the fight against TIFFs. The following are some of the internal stakeholders: the National Treasury, the Attorney General's Office, the EACC, the national police, and financial institutions, at internal stakeholders. The following are some of external/international stakeholders: the Global Forum, Africa Initiative, ATAF, UN Tax Committee, and the competent authorities of partner jurisdictions.

130 TIWB is a joint initiative of the OECD and the United Nations Development Programme (UNDP) supporting countries in building tax audit capacity.

Stakeholders at the national level contribute in tackling TIFFs by providing information upon request to exchange with other states, by implementing peer review recommendations and through engagements with members of multi-agency task forces. External stakeholders contribute to tackling TIFFs by funding, and providing technical assistance, capacity building, benchmarking, and peer review assessment.

The KRA ensures successful cooperation with the stakeholders by holding stakeholder engagement forums/workshops, taking into consideration stakeholder interests, top management support and combatting TIFFs as a cooperative strategic agenda has been integral in the fight against IFFs.

3.2.10. Overall assessment

Successes and challenges

Until December 2022, the KRA sent out 385 requests for information and received more than 160 responses, from which it received information that could not be obtained locally through tax audits and investigations.

The EOI unit has so far trained KRA tax auditors and investigators on the usage of EOI as a tool to combat international tax evasion. In 2020, Kenya introduced legislation on BO through the Companies Act, requiring companies to declare their BO. This will go a long way towards tracing the actual owners and beneficiaries and thus enhanced transparency.

However, there is limited awareness about TIFFs and on EOI instruments. There is also a lack of monitoring and evaluation mechanism to measure successes in tackling TIFFs.

Therefore, there is a need for more specialised training, capacity building and technical assistance e.g. for assistance in cross-border debt collection. Currently, there is no monitoring and evaluation framework on how successful the KRA is in tackling TIFFs.

3.3. Pakistan

3.3.1. Introduction

Some studies and reports indicate that tax evasion, particularly trade mis-invoicing, is weakening Pakistan's economy and the country is losing a huge amount of tax revenue that could have been used to enhance development spending.[131] The reports underscore that "tax evasion not only affects the overall development of the country, it also leads to inflation as the burden is passed on to the public".[132] The reports also indicate, based on evidence from Pakistan revenue authorities, that there is a huge difference between the revenue potential of the country (estimated to be around Pakistani rupees (PKR) 8 trillion) and the amount of revenue actually collected (estimated to be around PKR 4 trillion) every year.[133] Therefore, TIFFs are a major source of concern in Pakistan. The government of Pakistan also urges immediate and robust national and international action to curb IFFs/TIFFs.[134] This assessment has been conducted based on responses to the questionnaire and the detailed interview conducted with senior officials of the Federal Board of Revenue of Pakistan (FBR) as well as reviewing relevant documents that have been addressed in the responses and during the interview and are publicly available.

3.3.2. Policies and strategies on TIFFs

In Pakistan, policies, and strategies to counter TIFFs stem from the tax legislations that are in place such as the Income Tax Ordinance, the Sales Tax Act, the Excise Tax, the CA, the AMLA and the Benami Act. These laws deal with almost all the components of TIFFs in the form of tax evasion, tax avoidance, TP and trade mis-invoicing. The focus of the FBR has primarily been on the legislative framework and the laws and regulations in place. Whenever, a risk is identified in certain areas, that is related to TIFFs/IFFs, the FBR tries to address the loopholes through the legal framework. Therefore, even though there is no specific or separate official document (i.e. policy, strategy or plan) or a direct reference to the wording of IFFs and TIFFs, the policy and strategic interventions to counter TIFFs are incorporated, and to be inferred from, the legislative frameworks in place.

Pakistan closely follows the ATI Declaration 2020 (as supplemented by the ATI Declaration 2025) and has not officially adopted any other recommendation. Even though the policy

131 Asad Kamal, Tax evasion in Pakistan: Determinants and Requisite Policy Interventions, (European Online Journal of Natural and Social Sciences, 2019), available at http://www.european-science.com (accessed 25 Jan. 2023); Tribune, Tax evasion by five sectors amounts to Rs310b, available at https://tribune.com.pk/story/2333400/tax-evasion-by-five-sectors-amounts-to-rs310b (accessed 25 Jan. 2023); The News, Tax evasion renders Rs300bln losses to Pakistan's economy, available at https://www.thenews.com.pk/print/842778-tax-evasion-renders-rs300bln-losses-to-pakistan-s-economy (accessed 25 Jan. 2023).

132 Id.

133 Ahmed Bilal Mehboob, Reasons for tax evasion in Pakistan (Arab News Pakistan, June 2019), available at https://www.arabnews.pk/node/1518521 (accessed 25 Jan. 2023).

134 https://dailytimes.com.pk/864922/pakistan-urges-action-against-illicit-financial-flows-from-poor-nations/ (accessed 25 Jan. 2023); https://profit.pakistantoday.com.pk/2020/09/25/pm-imran-proposes-measures-to-stop-illicit-cashflow-from-developing-countries/ (accessed 25 Jan. 2023); and https://www.dawn.com/news/1507494 (accessed 25 Jan. 2023).

recommendations issued by different international organisations[135] have not been officially adopted or consulted directly by Pakistan, the existing legal framework has already contained some policy recommendations; including five to six principles from the "OECD Fighting Tax Crimes: Ten Global Principles" and some part of the other recommendations, such as, prosecution of tax crimes, joining the AEOI, safeguarding confidentiality of information, and building an IT infrastructure and a digital datacentre for EOI.

3.3.3. Tax abuse (evasion and avoidance)

Legal framework

The penal code does not deal with tax crimes. There is, however, a range of provisions for criminalising tax offenses under the tax laws.[136]

The tax laws also distinguish between the following tax crimes: income tax evasion and tax fraud,[137] smuggling, false statements, fiscal fraud, and sales tax fraud,[138] offences of money laundering,[139] and prohibition of Benami transactions.[140] The tax laws also criminalise enablers of tax evasion such as persons who are helping tax evaders by abetting, facilitating or enabling commission of tax offences.

Penalties on tax crimes are provided under the tax and customs laws as well as in the AMLA. The criminal sanctions apply to both individuals and legal persons. In the latter case, however, the sanction is ultimately imposed on the individuals behind the legal person involved in the criminal activity, for instance, in the case of companies, criminal sanctions apply to shareholders or directors by lifting the corporate veil.

Income Tax Ordinance, 2001 provides for anti-tax avoidance measures. The anti-tax avoidance measures include:

- recharacterising a transaction between associated enterprises to reflect the income as in arm's length transaction.
- recharacterising a transaction if its form does not reflect the substance in order to overcome tax avoidance schemes; and
- disregarding an economic entity or corporate structure created for the purpose of tax avoidance schemes.

135 The policy recommendations against TIFFs include the ATI Declaration 2025, OECD Ten global principles in fighting tax crime, Global Financial Integrity (GFI) reports, FACTI panel reports, AU/UNECA HLP report of 2015, UNCTAD reports, and FATF Recommendations on Combating Money Laundering and Financing of Terrorism and Proliferation.

136 The tax laws that are in place regarding TIFFs are the Income Tax Ordinance, 2001 (ITO, 2001); Sales Tax Act, 1990 (STA, 1990); Federal Excise Act, 2005 (FED, 2005); Customs Act, 1969 (CA, 1969); Anti-money Laundering Act, 2010 (AMLA, 2010); and Benami Transactions (Prohibition) Act, 2017 (BTA, 2017).

137 Sections. 111, 192 & 192A Income Tax Ordinance, 2001.

138 Sections 2(s), 32, and 32A, Customs Act, 1969 and Section 2(37) Sales Tax Act, 1990, respectively.

139 Section 3 Anti-money laundering Act, 2010.

140 Sections 3, 4 & 5 Benami Transactions (Prohibition) Act, 2017.

Institutional set-up

The FBR is the parent organisation under which the tax laws are administered by different field formations and directorates.

The FBR has two wings i.e. the Inland Revenue wing, run by the Inland Revenue Services and the Customs wing, run by the Customs Services. The Inland Revenue Services are engaged in the prevention, detection, investigation, prosecution and asset recovery of tax evasion and tax frauds under relevant laws including the AMLA. Similarly, the Customs Services deals with the prevention, detection, investigation, prosecution and asset recovery under the CA and AMLA with regard to customs evasion and fraud. The Directorate General of Intelligence and Investigation is the most pivotal part of the FBR in dealing with tax offences. This Directorate General's primary role is the prosecution of tax crimes.

Further, regional tax offices and the Directorate General of International Taxes within the FBR are responsible for the implementation of anti-tax avoidance measures. The offices are reasonably equipped in terms of human resource, expertise and infrastructure.

Enforcement

There are risk assessment parameters for tax auditing that are discussed and approved by the Boarding Council of the FBR. The FBR conducts tax audits of companies and individual taxpayers and the selection of risky areas from the TIFFs perspective will start with information filed and gathered for auditing purposes. There is a multitude of areas incorporated in analytical software that identify the best areas and the risky areas, and this is how TIFFs-related risks are being selected. The risky areas are auto selected based on the risk assessment criteria included in the software and information technology helps the FBR with proper case selection. The risks are selected on an annual basis based on the risk assessment parameters. Enforcement of data analytic tools are improving from time to time.

Successes and challenges

In general, there is a resource limitation (or budget constraint) for investigation, prevention, prosecution, and asset recovery due to the Pakistan government's austerity programmes.

The tax offices are limited to major cities and are not located in small districts since these districts are not generating substantial amounts of tax revenue.

The legislative framework to tackle TIFFs is in place. However, the provisions under the Income Tax Ordinance against tax evasions are weak to the extent that the FBR cannot prosecute or arrest an individual for tax evasion or suspected tax evasion and confiscate their assets. The weakness in tax laws such as the power to arrest suspected tax evaders and confiscate their proceeds needs to be addressed by the legislator in order to strengthen the legal framework against TIFFs.

3.3.4. Transfer (mis)pricing

Legal framework

The TP rules are provided in Rule 20 to Rule 27 of the Income Tax Rules, 2002.
The penalty provisions are provided for violation of TP rules under serial 18 and serial 22 of Section 182 of the Income Tax Ordinance, 2001. Failure to maintain documentation related to transactions entails a penalty equivalent to 1% of the value of transaction.

Institutional set-up - TP Unit

There is no separate TP office or unit as such in the FBR. TP rules are applied by offshore commissionerates having jurisdiction all over Pakistan. There are six offshore commissionerates across the country working in the Directorate General of International Taxes. Their scope is limited but include conducting the TP analysis based on information received through the AEOI. The offshore commissionerates only deal with TP cases selected by the Director General of International Taxes. Because of the existence of offshore commissionerates, the FBR does not see the need to build a separate department for TP.

Successes and challenges

Around 10 audits are conducted in each commissionerates annually. TP related training is partially absent because the implementation of the TP rules is relatively new for Pakistan and they do not have much expertise in dealing with sophisticated TP cases in a full-fledged manner. Although there are experts doing very well and learning by their own, there is a need for training on TP issues. The FBR have requested different international organisations and training agencies for help so that it can provide training to the offshore commissionerates offices to deal with TP cases as per the international best practices. They are on a learning curve, but there is more to be done. The lack of comparability databases is also a major problem in conducting tax audits.

3.3.5. Trade mis-invoicing

Legal framework

The legal framework to prevent mis-declaration or mis-invoicing and subsequent measures falls under the relevant provisions of the CA, the Sales Tax Act and the Income Tax Ordinance. The CA, for instance, identifies mis-declaration under Section 32 (false statement) and Section 32A (fiscal fraud) along with punishment for offences under Section 156. Moreover, such offences are also recognised as predicate offence and made part of the schedule of the AMLA.

Institutional set-up

The FBR is responsible for preventing, detecting, investigating and prosecuting trade mis-invoicing. The Customs Service play the main role in implementing the measures to curb trade mis-invoicing. Furthermore, the Customs Service is partnering with other countries to implement an electronic data interface (EDI) to seek real time value of the GD from the trading partner country.

Enforcement

FBR has recently identified the most undocumented set of trades in the wholesale and retail sector. The contribution of this sector to tax is very limited while its contribution to GDP is around 18% in 2021. Based on these figures and lesson learnt from the best practice of international community, the FBR introduced a tracking and tracing mechanism that is incorporated in the Sales Tax Act. The tracking and tracing mechanism enables the FBR to obtain real-time invoices as well as the number of invoices issued by the retailers by the name of the point of sale (POS) and the name of the project. This mechanism has an immense impact on countering trade mis-invoicing and contributes to avoiding revenue leakages and countering new loopholes.

The Customs Services are dealing with imported goods and they have established mechanisms with a few countries (including China) to have an electronic exchange of data regarding imports and exports so that the true value is reported in the country where the goods are landing.

Successes and challenges

After the big-tier retailers in Pakistan have joined the point of sale (POS) integration through the tracking and tracing mechanism, real-time reports of sales jumped on average to around PKR 70 million. Therefore, the point of sale is very effective in capturing trade mis-invoicing since it identifies the goods once they land in Pakistan or once they are manufactured inside Pakistan.

There were substantial differences on customs data between Pakistan's and Chinese customs authorities regarding the same import/export. China reported that it had exported USD 3 billion of goods to Pakistan but Pakistan importers are showing only USD 50 million to 1 billion, therefore showing a big gap of under-invoicing in Pakistan. However, after Pakistan and China entered into agreement to exchange customs data, importers are forwarding the real-time information to Pakistan and there are no more gaps through under-invoicing.

This exchange of customs data helps to combat TIFFs through mis-invoicing and enhance revenue collection.

At least for the time being, it is very difficult to deal with under-invoicing or over-invoicing through cash-based economy resulting in undocumented economic transactions. These will be dealt with through transition into digitalisation.

3.3.6. Transparency and exchange of information

Legal framework

There are specific legal provisions in the Sales Tax Act, Income Tax Ordinance and other tax Acts that allow the FBR to request financial information on taxpayers either from financial institutions, such as banks or from taxpayers or from any other person. However, there is no automated platform to collect information automatically. Mostly the information is sought from reporting financial institutions, vehicle registration authorities and departments or organisations holding land records and information.

The Income Tax Ordinance empowers the FBR to exchange information with other jurisdictions through international agreements.

Currently, Pakistan has 66 DTAAs that contain EOI provisions. Pakistan is a member of the Global Forum and it has implemented the standard of EOIR. The FBR has generated more than 1000 EOIRs in the last 3 years. In addition, Pakistan is signatory to the MAATM MC and FBR receives information either automatically or upon request. Pakistan is also a signatory to the MCAA on Automatic Exchange of Financial Account Information (CRS-MCAA) which provides the international legal basis for comprehensive automatic exchanges with foreign jurisdictions.

Institutional set-up - EOI Unit

The FBR has upskilled its EOI staff in the management of EOI requests. The six offshore commissionerates are working on EOI under Directorate General of International Taxes. They are responsible for the use of data received from foreign jurisdictions as per law. The offshore commissionerates' performance is monitored through monthly performance reports (MPR) by the Directorate General International Taxes, the FBR.

Enforcement

There is a national database and registration authority (NADRA), which acquires all relevant information about individual taxpayers. The NADRA is cooperating with the FBR as the FBR cannot go after each individual taxpayer. The NADRA database enables the FBR to obtain all relevant information about individual taxpayers that is not accessible to FBR otherwise. The NADRA database also indicates the areas in which the FBR should focus for tax purposes. The FBR has an automated information exchange platform to disseminate information within the Inland Revenue Services and Customs Services Departments.

Furthermore, the FBR is in the process of signing data sharing memoranda with other federal and provincial government departments to build a holistic database of taxpayers' income and assets.

Successes and challenges

Pakistan has been successful in receiving information through the AEOI or EOIR. So far, Pakistan has managed to receive financial account information from around 86 countries and has sent information to more than 65 countries. The FBR received CRS-AEOI data from 27 jurisdictions in 2018, 55 jurisdictions in 2019 and 49 jurisdictions in 2020.

EOI is playing a very significant role in revenue mobilisation. The FBR is carrying out a lot of revenue mobilisation works based on information received through the MAATM MC and it is conducting investigation on potential cases. So far, Pakistan has identified around USD 27 million as potential tax revenue not paid and managed to collect around USD 6 million due to the EOI through the MAATM MC and this is considered a great success.

The automated information exchange platform within federal and provincial tax offices is evolving.

3.3.7. Interagency cooperation

There are no other institutions other than the FBR that deals with tax evasion and tax avoidance practices. Currently, there is no interagency cooperation framework or coordinating agency in place. There is also no legal obligation to disseminate or exchange information with other government agencies outside the FBR that are or can be involved in tackling TIFFs. Therefore, effective interagency coordination mechanism is not in place in Pakistan's domestic tax administration system involving government departments outside the FBR to coordinate efforts in combatting TIFFs.

3.3.8. Capacity building

The human resource management of the FBR has a specific and dedicated unit for training and development for training officials and staff. This unit receives trainings from abroad and nominate candidates for the training. The FBR receives trainings from the OECD, the Asian Development Bank (ADB), the ATI and other institutions specifically regarding international taxes.

However, there is a capacity-building concern and FBR experts need to understand the details of international taxes and tax planning strategies used by MNEs to manipulate arm's length transactions, as well as best practices relating to combatting TIFFs practice by other countries. TP and EOI issues are also relatively new for Pakistan. Therefore, there is a need for extensive training courses on international taxes, TP and EOI.

The investigation and prosecution actions of FBR are at an early stage of development and the FBR needs capacity building and financial support to strengthen this regime to combat TIFFs.

3.3.9. Stakeholders' engagement

The FBR is the lead agency for combatting TIFFs and it has engaged the relevant internal and external stakeholders from within and outside the government to handle the challenge.

The internal stakeholders include but are not limited to the following: the NADRA, the Financial Monitoring unit (FMU) created under the AMLA, the Securities and Exchange Commission of Pakistan (SECP), the National Accountability Bureau (NAB), the Federal Investigation Agency (FIA), the reporting financial institutions (RFIs); and the provincial revenue authorities.

The stakeholders provide assistance in information sharing, capacity building on investigation and prosecution, and also work together for strengthening the legislative framework.

The FBR has actively engaged the media and civil society to foster the tax culture in the country. Civil society and the media are effectively used to sensitise people regarding their tax obligations as well as to deter people from engaging in practices resulting in tax related IFFs. As a result, tax compliance in Pakistan is improving and the number of return filers has increased more than 50% from 2018 to 2020.

Stakeholder support has helped to include tax evasion and concealment of income in the list of predicate offences under the AMLA. Now the FBR is actively pursuing cases under the AMLA, which has led prosecution and conviction of tax evaders. These efforts help to create deterrence against tax crimes.

There is support from the WBG in relation to Pakistan's revenue reform programme. There are also ongoing negotiations with the IMF to undergo structural adjustment programme in the FBR, mostly focusing on revenue targets. The OECD, ADB and ATI are providing assistance and the FBR is trying to build its capacity as much as possible given the resources obtained from them.

3.3.10. Overall assessment

Successes and challenges

In the past few years, the strengthening of the EOI regime and active engagement of stakeholders by the FBR has led to a significant improvement in combatting TIFFs. For instance, the information received under CRS-AEOI in the past couple of years led to tax assessments of around USD 27 million and tax recovery of around USD 6 million.

The investigation and prosecution efforts, though at an early stage of development, are playing a significant role in reducing TIFFs.

FBR officers need support in the development of investigation and prosecution expertise. Moreover, the FBR actively needs to create awareness and educate people on their tax obligations and consequences of engaging in TIFFs.

Success stories for Pakistan include implementing the legal framework for AEOI within a short time with the physical infrastructure, the Global Forum peer review group and its active engagement on international forums.

There are some weaknesses in the existing legislation particularly in the Income Tax Ordinance regarding provisions against tax evasion. There are some weaknesses in implementing the existing rules as well as limitations in capacity building /training on international taxes, TP and EOI.

Pakistan will try to resolve some of the issues identified as problems and weakness and work on capacity building and increase participation on the peer review and other international forums.

3.4. Rwanda

3.4.1. Introduction

Tax evasion is one of the most prevalent financial crimes in Rwanda contributing to an estimated revenue loss of Rwanda frank (RWF) 20 billion over the last 5 years.[141] It was reported that, in 2016 alone, the Rwandan tax revenue loss through tax evasion was estimated to be around RWF 6.8 billion involving 25 companies.[142] Trade mis-invoicing practices are also posing serious threat and loss of government revenues.[143] The following assessment has been carried out based on the Ministry of Finance and Economic Planning (MoFEP) and the Rwanda Revenue Authority (RRA) responses to the questionnaire, interviews conducted with tax officials of the MoFEP and RRA and by reviewing Rwanda legislation as well as publicly available documents.

3.4.2. Policies and strategies on TIFFs

Currently, there are no policies or strategies dealing with TIFFs or referring specifically to TIFFs. However, there are various laws and provisions tackling tax evasion and tax avoidance practices and Rwanda is implementing them to counter the negative effect of TIFFs in its effort to mobilise tax revenue.

Rwanda is dealing with tax revenue mobilisation through a medium-term revenue strategy, already approved by the Cabinet, targeting to increase revenue by 1% in 2025. The medium-term revenue strategy also aims at improving the efficiency of the tax system by addressing tax evasion and tax avoidance practices and reducing the tax revenue gap in order to achieve the revenue increasing strategy. To this effect, the income tax regime has undergone a comprehensive review and key provisions including, but not limited to, GAAR and APA to reduce the current tax evasion and tax avoidance practices (i.e. TIFFs).

Rwanda has considered the policy recommendations issued by the Mbeki report "AU-UNECA report of the High-Level Panel on Illicit Financial Flows from Africa 2015" and the UNCTAD reports on TIFFs.

141 E. Favour, Tax evasion most prevalent financial crime in Rwanda, (The New Times, Dec. 2022), available at https://www.newtimes.co.rw/article/188779/News/tax-evasion-most-prevalent-financial-crime-in-rwanda (accessed 23 Dec. 2022); see also G. Mascagni, F. Santoro et al., Active Ghosts: Nil-filing in Rwanda, World Development V152 (Elsevier Ltd, April 2022), available at https://doi.org/10.1016/j.worlddev.2021.105806 (accessed 26 Jan. 2023); and https://www.police.gov.rw/media-archives/news-detail/news/police-rra-up-against-tax-fraud/.

142 https://www.ktpress.rw/2016/09/25-companies-named-in-rwf-6-8-billion-tax-fraud/ (accessed 26 Jan. 2023).

143 https://www.police.gov.rw/media-archives/news-detail/news/police-rra-up-against-tax-fraud/ (accessed 26 Jan. 2023).

3.4.3. Tax abuse (evasion and avoidance)

Legal framework

In relation to tax abuses, both the TPA and the criminal code deal with tax crimes or criminalise tax offences.

The TPA deals with offenses of tax evasion and criminalisation mainly, among others, through the use of forged documents and hiding taxable assets from the tax administration. A large range of tax law violations or wrongful acts will be punished by administrative fines.

Aiding, abetting and conspiracy with a taxpayer in order to contravene tax laws is punishable by administrative fines under the TPA.[144] However, the TPA does not criminalise enablers of tax evasion.

Currently, the RRA relies on the following specific anti-abuse rules:

- thin capitalisation rule with debt-to-equity ratio of 4:1;
- fees for technical service, royalties and management fee paid by a resident person to a non-resident related person can be deducted only up to 2% of the total company's turnover for the tax period; and
- the loss carry-forward is limited to 5 years and a change in direct or indirect ownership of share or voting right of more than 25% in a company usually lead to the loss in deferred tax asset (arising from previous loss).

Section 68 of a new ITA[145] contains anti-abuse rules regarding tax avoidance arrangements, including:

- arrangements whose principal purpose is to obtain a tax benefit;
- arrangements that lack of commercial substance;
- artificial arrangements to obtain tax benefits; and
- any arrangements that directly or in directly abuses provisions of the Tax Laws in Rwanda.

The RRA may disregard such arrangement, recharacterise the nature of any income, payment, expenditure or transaction, or disallow or reallocate any income, loss, deduction, allowance or relief.

Every VAT-registered taxpayer needs to use electronic billing machines (EBM) and they need to issue invoice through this EBM. No refund claims will be handled unless they submit invoices issued by the EBM.

144 Article 82 of Tax Procedure Law of Tanzania Official Gazette No Special of 10 October 2019.
145 ITA No. 027/2022 was issued after the interview was conducted.

Institutional set-up

The RRA is engaged in the prevention, detection, investigation, and asset recovery on tax frauds. There is a Revenue Investigation and Enforcement Department (RIED) within the RRA that deals with tax fraud and is in charge of the above-mentioned activities (i.e. including minimising revenue losses by deterring, detecting and preventing smuggling, tax evasion and avoidance as well as other breaches of fiscal laws[146]). This department has a staff of 43 persons as well as other additional staff from the Rwanda Investigation Bureau (RIB). RIED staff follow trainings every year through a continuous education programme that serves all RRA staff. Similarly, Customs Services are also engaged in the prevention and detection of customs duty violators.

Enforcement

The RIED detects tax crimes during audit or investigation processes. The RIB may also detect, investigate, and prosecute tax crimes mostly based on information from RRA through RIED. The RRA will first impose administrative fines and then submit serious tax fraud cases to the RIB for criminal prosecution. After the selected serious tax fraud cases have been submitted to the RIB for criminal prosecution and lodged to the Criminal Court, the RRA has no power to follow up the outcome of the criminal proceeding.

In practice, the RRA goes after tax defaults mostly through audits investigations and once it finds elements that are crucial for serious tax crimes, it will forward the tax fraud cases to the RIB for prosecution highlighting the potential violations of the tax laws and the taxpayer involved.

The RIB and RRA work together and collaborate on the investigation of tax frauds and only those serious tax fraud cases will be submitted to RIB by the RIB staffs in the RIED. The RIB then further investigates the submitted cases deeply. However, there is no further consultation once a case is transferred to the RIB after the criminal prosecution has commenced. The RIB takes it up without further discussions with the RRA.

3.4.4. Transfer (mis)pricing

Legal framework

TP rules have been included in the legal framework since 2005. However, their actual implementation started in 2019 and became effective in 2020 with the Ministerial order which establishes the general rules on TP.[147] The TP rules require, among other things, companies to adopt a TP policy and maintain documentation that verifies that transactions between related parties are consistent with the ALP.[148] Any violation of TP rules is punishable by understatements penalty, late payment penalty, administrative fines and interest rate. For tax

146 https://www.rra.gov.rw/index.php?id=84 (accessed 26 Nov. 2022).
147 Ministerial Order 003/20/10/Tc of 11 December /2020 Establishing General Rules on Transfer Pricing.
148 Id, Article 17.

evasion, upon conviction, in addition to the abovementioned penalties, a person may be convicted to imprisonment for a term of not less than 2 years and not more than 5 years.

Institutional set-up -TP unit

The ITU within the RRA, established in 2018, deals with TP and other international taxation issues. Currently, there are 4 staff members dealing with TP issues. They receive capacity building from the ATAF every year and there are plans to increase the staff to at least 12.

Enforcement

The TP team started carrying out some TP audit corrections in 2019. It is getting technical assistance and support in terms of trainings from different stakeholders including from ATAF and the European Union (EU). There are two consultants helping the RRA in this respect. Currently, the team handles around eight TP cases per year.

Success and challenges

The RRA has managed to conclude the eight TP cases and correct tax assessments thanks to the technical assistance received as well as by using the Orbis database and the RRA is collecting more taxes now. However, there are still difficulties in obtaining external comparables or public information about many companies in Africa.

The RRA has its own system to obtain some basic information which helps in the risk profiling of TP cases. It also has access to other information sources such as information from the ORG. However, the RRA has not yet started building its own database and will continue using the Orbis database and other external database providers.

The RRA is looking forward to expanding the TP team and the tax administration is undergoing a structural reform.

3.4.5. Trade mis-invoicing

Legal framework

The legal frameworks to prevent trade mis-invoicing/misdeclaration and subsequent measures falls under the relevant provisions of the TPA, CA, and VAT Act. The other legal framework for trade mis-invoicing includes the EAC-CMA and the ECA Customs Management Regulations (ECA-CMR).

According to the TPA, any mis-invoicing that leads to understatement, is punished by a penalty of not less than 10% but does not exceed 20% of the evaded tax and the penalty doubles in case of repetition. VAT registered taxpayers who are not issuing invoices using the EBM in any transaction, including for imports, exports, and distributions are subject to the same penalties.

Institutional set-up

The RRA's Revenue Investigation and Enforcement Department (RIED) is in charge of ensuring the effective usage or issuing of invoice through constant unplanned inspections of different taxpayers, checking the documentation of transported products on the road and so on.

Enforcement

Customs services investigate the value of imported (and exported) goods to tackle trade mis-invoicing in the form of under-invoicing or over-invoicing the value of goods. The Customs Service uses a system called Automated System for Customs Data ++ (ASYCUDA ++) to quarry and determine the value of imported or exported goods. Quarrying the value of the transactions, the Customs Services should check their database or the ASYCUDA system and adjust the value of imported goods when the goods are undervalued or overvalued. The same applies to exports.

The Customs Services work together with other departments of the RRA. Therefore, the domestic revenue services are able to access the customs services' system of ASYCUDA ++ and in some cases the domestic services request for extracted information on importation of certain taxpayers.

Successes and challenges

Until now, the Customs Services have been adjusting the values of imported and exported products based on ASYCUDA ++ and trying to determine the correct value of goods for customs levy and tax purposes.

However, there is a major challenge in identifying trade mis-invoicing practices. The RIED lacks expertise and resources to deal with trade mis-invoicing and other related tax fraud cases.

For example, Rwanda has a scheme under which manufacturers, raw materials and machines are exempt from VAT and customs duties. However, some importers have overestimated the value of exempted items they are importing into the country because they use them as huge deductible expenses, depreciate higher value and reduce their domestic tax liability at the end of the year whereby the RRA hardly collects any tax revenue.

There are similar challenges in the mining sectors especially regarding the exportation of mining products, such as gold, due to the lack of official global pricing for the real official value of the product on the Rwanda Metal Exchange.

ASYCUDA ++ incorporates the East African Community (EAC) Tariff specification codes for more than 120, 000 products. The next step is to expand the list of products so that Customs Services will be able to determine the valuation of imported products spontaneously.

Resources and lack of expertise are the key challenges for the RRA's Revenue Investigation and Enforcement Department (RIED) in tackling TIFFs.

3.4.6. Transparency and exchange of information

Legal framework

The TPA provides that the RRA may obtain information from taxpayers and any other persons upon request and only during tax audit. According to Article 32 of the TPA, information may be obtained upon request and only during an audit. There is no automated platform to collect information automatically from private individuals.

Article 32 of the TPA has now been reviewed and is being amended to extend information request outside the context of tax audits for the purpose of EOI with other jurisdictions through DTAAs and through the MAATM MC. Currently, Rwanda has only 12 DTAAs which puts it in a situation where the RRA could not request or receive tax information internationally. Rwanda is signatory to the MAATM MC, and it addresses the gaps on EOI created by a narrow tax treaty network. Rwanda joined the Global Forum in 2017 and since then it has been working with the Global Forum and amended its laws to comply with the standards required for EOI.

Institutional set-up - EOI Unit

An EOI Unit was set up and has started working since December 2021. The RRA has access to information from the ORG and the National Bank of Rwanda without request. The ORG is responsible for registering businesses (taxpayers) and once businesses register at the ORG, they receive a Tax Identification Number (TIN). The systems of RRA and ORG are linked and therefore the RRA has access to taxpayers' information.

Enforcement

Rwanda is trying to implement recommendations by the Global Forum which includes BO information for EOI. BO information was not included in the Rwanda system but now the ORG is working on this by collecting all BO information from taxpayers and the RRA will have access to that information. Currently there are two legal instruments requiring BO information and these are the Company Law issued in 2021 and the AMLA issued in 2020. Rwanda is now embarking on implementing these Acts in gathering BO information and support the RRA in discharging its duties and responsibilities.

Regarding AEOI, Rwanda is in the process of introducing standalone primary legislation for AEOI highlighting the responsibilities of financial institutions, the timeline for providing information and the responsibilities of the RRA.

Currently, Rwanda is implementing EOIR and is committed to AEOI as from September 2024. Peer review on EOI is scheduled for the second quarter of 2023. The RRA can obtain information from self-assessment declaration with attachments such as books of accounts.

Successes and challenges

Rwanda has been moving forward in terms of EOI by amending its domestic legislation to facilitate the collection of information domestically and to foster EOI internationally. Its membership of the Global Forum and signing the MAATM MC are major steps in enhancing the RRA's tax administration capacity with active international cooperation. However, Rwanda has very limited experience when it comes to EOI. Indeed, there are ongoing efforts to turn the tide including the already established specialised unit at the RRA that deals with EOI matters.

So far, the EOI unit received three EOI requests from other jurisdictions but the RRA has not yet requested or received information from other jurisdictions.

3.4.7. Interagency cooperation

Rwanda has recently established FIU as recommended by the FATFA. The FIU has a staff of 33 out of 36 and is responsible for financial due diligence. The FIU has already started working with RRA on a case of tax fraud which is in progress now. The RRA also works with the Rwanda Mining Board, National Bank of Rwanda and the ORG.

Currently, there is no consolidated framework for interagency coopetition except a formal exchange of relevant issues or sharing information under their mandate (i.e. National Bank of Rwanda, FIC, ORG and Rwanda Mining Board). The systems of ORG and RRA have been integrated for BO and other corporate information.

A committee, involving the RRA, the National Bank of Rwanda, the Rwanda Mining Board, the FIU, the ORG and the Capital Market Authority, was established to close the gaps identified by the Global Forum in its report of 2020 and to assess which laws should been amended. In the future, Rwanda will work on this to consolidate the cooperation among the relevant government institutions following the recommendations by this report.

3.4.8. Capacity building

Resources and a lack of expertise are the key challenges for the RRA revenue investigation department.

The ATAF is assisting in enhancing the capacity of the TP Unit in the RRA on a yearly basis by providing one-week training to all RRA auditors and the TP team. Regarding capacity building on EOI, the RRA is working closely with the Global Forum on EOI and BO information. The RRA also receives trainings from the United Kingdom (UK) tax authorities on addressing revenue gaps.

The RRA needs training on statistics particularly on how to estimate Rwanda's revenue losses through IFFs and TIFFs to ensure that the RRA will create awareness for politicians and bring policy initiatives to the government. The RRA also needs trainings on methodologies to understand how to identify TIFFs in a Rwandan context.

3.4.9. Stakeholders' engagement

Rwanda has the following internal and external stakeholders which are supporting RRA in tackling issues on TIFFs:

- GIZ: financial support for studies and capacity building;
- the National Bank of Rwanda: regulations through reporting and information sharing;
- Rwanda Finance Limited: stakeholder mobilisation;
- the ATAF: capacity building and gap assessment; and
- the Global Forum: capacity building and gap assessment.

3.4.10. Overall assessment

Successes and challenges

Rwanda is in the middle of its journey having worked on different initiatives and amendments. It is trying to further improve its tax system in order to boost its tax revenue collection with a better tax-to-GDP ratio. With its TP unit, EOI unit and the RIED, the RRA has been able to reduce the size of TIFFs. However, more need to be done in terms of capacity building through allocating more budget and hiring more staff.

Some gaps have been identified in the existing legislation, particularly in terms of collecting information for EOI purposes and a consolidated framework to coordinate the working relationship among different institutions. There are some capacity limitations in understanding the prevalence of IFFs and TIFFs and the statistical methodologies in calculating the tax revenues Rwanda has been losing through TIFFs.

Especially within the RIED, there is a lack of expertise and resources to deal with trade mis-invoicing and other related forms of tax fraud.

Rwanda will continue addressing some of the issues identified as problems and weaknesses, including resolving the gaps in its domestic law through amendment and new legislations, and it will keep working on capacity building initiatives to enhance the RRA's capacity.

3.5. Tanzania

3.5.1. Introduction

Tanzania is one of the top-mineral rich countries in Africa. The country has experienced large tax revenue losses through TIFFs. Tanzania has made headlines over the past few years for its ardent interest in dealing with MNEs in the mining sector and their IFFs/TIFFs practices.[149] A GFI report (2014) on Tanzania over the period of 2002 to 2011 estimates that the country lost around USD 18.73 billion in revenue through trade mis-invoicing (i.e. USD 8.28 billion through under invoicing of exports and USD 10.44 billion through import over invoicing).[150] The study also estimates that the potential average tax losses from trade mis invoicing amounted to roughly 7.4% of Tanzania's total government revenue over those years to IFFs. Therefore, there is no doubt that IFFs/TIFFs constitute a major source of devastation to the DRM efforts. The following assessment has been conducted based on the Tanzania Revenue Authority (TRA) responses to the questionnaire, an interview conducted with a senior tax official at the TRA and additional written answers to the detailed interview questions as well as reviews of legislation and publicly available documents.

3.5.2. Policies and strategies on TIFFs

Tanzania has national development plans commonly known as Vision 2025 and 5-year development plans dealing with DRM are geared towards minimising dependency on foreign resources. However, there are no policies, strategies, or legal documents with specific description of IFF/TIFFs. The tax laws and the Mining Act contain elements that deal with the components of TIFFs in the form of tax evasion and tax avoidance and counter measures thereon.

Tanzania has also implemented some of the recommendations on combatting IFFs/TIFFs issued by different institutions[151] including the ATI Declaration 2025.

3.5.3. Tax abuse (evasion and avoidance)

Legal framework

Violation of tax law is criminalised under the tax code, particularly in Sections 82 to 91 of the Tax Administration Act (TAA). The tax crimes or offences covered by the tax laws include failure to file tax return on time or pay tax on the due time, making or using false or misleading statements or documents, failure to register with VAT, and using unstamped instruments.

149 L. Miyandazi, The complexities of tackling illicit financial flows in practice-The Example of Tanzania, (ECDPM 2019), https://ecdpm.org/application/files/1316/5969/4861/DP-255-The-complexities-of-tackling-illicit-financial-flows.pdf (accessed 28 Nov. 2022).

150 Baker, supra n. 1.

151 Such as Global Financial Integrity (GFI) reports, FACTI panel reports, AU/UNECA HLP report of 2015, UNCTAD reports, OECD Ten global principles in fighting tax crime, Tax Transparency in Africa.

Regarding anti-tax avoidance, the Tanzanian tax system contains the following provisions. Section 8 of the TAA (Schemes for obtaining undue tax benefits), Section 12(2) of the ITA (which sets a thin-capitalisation rule (a debt-to-equity ratio of 7 to 3), Section 33 of the ITA (dealing with TP), Section 34 of the ITA (on income splitting), Section 56 of the ITA (which addresses change of ownership of a business), Section 57 of the ITA (on dividend stripping), and Sections 73 – 76 of the ITA (on the treatment of foreign controlled entities).

Tanzania has 9 DTAAs which contain some anti-abuse provisions.

Institutional set-up

The TRA is responsible for the prevention, detection, and investigation of tax fraud as well as for the implementation of anti-tax avoidance measures with a staff of around 6000 persons. There is a Tax Investigation Department within the TRA that deals with tax abuses. The Tax Investigation Department is staffed with competent and well-equipped staff. The Public Prosecution Institution is in charge of prosecution and the TRA submits tax fraud investigation results for the criminal prosecution of tax crime.
There are also other institutions, such as the FIU and the Prevention and Combatting of Corruption Bureau (PCCB) which have some responsibilities for tackling tax abuses.

Successes and challenges

Assessments of the existing legal framework and institutional set-ups have been conducted through management meetings which also generates ideas for tax reforms. There are certain limitations of technical capacities so that continuous capacity building is necessary to effectively tackle TIFFs through the existing legal framework on tax evasion and tax avoidance.

3.5.4. Transfer (mis)pricing

Legal framework

The TP legislation is incorporated in the ITA and in the Tax Administration Regulations on TP issued in 2018. The TP legislation requires taxpayers to prepare TP documentation. The TP rules also provide specific penalties for non-compliance. The penalties are imposed whenever non-compliance is detected. Offences and administrative penalties regarding TP are addressed within the TAA.

Institutional set-up - TP unit

The TP Unit is part of the ITU which also handles tax treaties and EOI. TP cases take up the largest share of work of this unit. The unit has 20 staff members working on TP audits.

Enforcement

On average around 50 TP cases are handled by the TP unit per year. The TRA has many cases that end up in courts. The TRA uses commercial databases from Bureau van Dijk.

Successes and challenges

Tanzania continues its efforts to effectively enforce TP legislation. The number of TP documentation sets filed increased from 23 in 2015 to 156 in 2022. Imposition of penalties for non-compliance contributes to increasing revenue and enhancing compliance with TP. TP audits also help to counter transactions that are not compliant with the ALP. This not only protects the tax base but also prevents recurrence of transactions with a TIFFs objective.

TP audits are essentially facing difficulties when determining appropriate comparables. Therefore, finding appropriate comparables is the main challenge in TP auditing and the main issue that leads to disputes between taxpayers and the TRA. Competency is not an issue as TRA staff receives continuous training including training from IBFD.

3.5.5. Trade mis-invoicing

Legal framework

Section 8 of the TAA and the EAC-Customs Management Act (EAC-CMA) deal with trade mis-invoicing practices as follows. The trade mis-invoicing offences include, misdeclaration of goods value on importation/exportation: (Section 203 of the EAC-CMA, 2004), misclassification of goods importation/exportation (Section 203 of the EAC-CMA, 2004) and importation of counterfeit/prohibited goods (Section 200 of the EAC-CMA), 2004).

Institutional set-up

The TRA mostly deals with trade mis-invoicing through its Customs and Excise Department which is responsible for international trade transactions. The TRA also works closely with the Tanzania Ports Authority which is in charge of shipping activities.

Regarding trade mis-invoicing in the natural resources, the Mining Commission (former Tanzania Mineral Audit Agency) does a lot of work relating to export transactions. Tanzania is also a member of the Transparency Initiatives on Extractive Industries and that helps.

Enforcement

The cooperation between the TRA and other agencies on trade mis-invoicing is carried out through MoUs.

3.5.6. Transparency and exchange of information

Legal framework

The TAA deals with information on tax matters. The Commissioner General of the TRA has the power to obtain all relevant tax information from any person including private and public institutions as provided under the TAA.

MoUs in relation to EOI exist with other government agencies such as the Business Registrations Office and others. The major role of MoUs is to facilitate information sharing between the institutions involved. The information sharing is carried out through sending information requests to the responsible party.

There is no legislation dealing with EOI except a provision in Section 21 of the TAA. Tanzania's 9 DTAAs contain provisions on EOI. It has not yet signed the MAATM MC.

Institutional set-up - EOI Unit

The ITU within the TRA coordinates EOI activities. Currently, the EOI unit has 6 staff members and a database for record keeping.

Successes and challenges

The major challenges in EOI are associated with limitations with respect to the number of DTAAs. The Ministry of Finance is the competent authority for DTAA purposes but the Commissioner General of TRA acts on delegated authority. Currently the role of the ITU extends to coordination of EOI processes.

3.5.7. Interagency cooperation

No consolidated framework exists for interagency cooperation in tax matters and cooperation with government institutions is on an ad hoc basis.

3.5.8. Capacity building

Capacity building gets a lot of attention in the TRA. There are continuous capacity building initiatives through the Institute of Tax Administration for Continues Capacity Building of the TRA for TRA staff with supports from development partners including Japan, the Netherlands, Norway and the United States (US), particularly on TP and international taxation training.

To keep design and delivery of tailored trainings for the staffs, TRA concludes MoUs with training institutions including IBFD to provide trainings in a sustainable manner.

3.5.9. Stakeholders' engagement

There are various stakeholders who are working with the TRA including the Tanzania Extractive Industries Transparency Initiative (TEITI), the FIU, the Mining Commission, civil society organisations e.g. Haki Raslimali and Haki Madini are working on strategic advocacy issues around minerals, oil and gas extraction in Tanzania and the media.

The TEITI reports help promote transparency in the extractive industry and its contribution to government revenue. The information from these reports provides part of the audit benchmark for the TRA. The Mining Commission is responsible for enforcement of mining laws and collection of royalties in collaboration with the TRA. The civil society has been actively involved in research and advocacy.

3.5.10. Overall assessment

Successes and challenges

The number of TP documentation sets filed increased from 23 in 2015 to 156 in 2022. Imposition of penalties for non-compliance contributes to increasing revenue and enhancing compliance with TP. This not only protects the tax base but also prevents recurrence of transactions with a TIFFs objective.

TP audits are essentially facing difficulties when determining appropriate comparables. There are also challenges in EOI which are associated with limitations with respect to the number of DTAAs and engagement in international forums on EOI.

There are many efforts underway in combatting TIFFs particularly in the extractive sectors. The revenue from the mining sectors has increased in recent years following the 2016 and 2017 tax reforms in some special sectors.

Tanzania still faces many problems in the taxation of mining, tourism, telecom, and digital economy, as well as high-net-worth-individuals.

Strengthening the TRA's capacity to tackle tax evasion and tax avoidance practices and enhancing DRM is a pending issue.

3.6. Uganda

3.6.1. Introduction

In Uganda, several challenges continue to hamper the DRM efforts and IFFs/TIFFs are the key challenges.[152] For instance, a GFI study (2014) of Uganda over the period of 2002 to 2011 estimated that Uganda lost around USD 8.84 billion revenue through trade mis invoicing (i.e. USD 8.39 billion through under-invoicing of exports and USD 457 million through import over-invoicing).[153] The study also estimates that the potential average revenue loss from trade mis-invoicing amounted to roughly 12.7% of Uganda's total government revenue over those years and equivalent to 2.6% of its GDP per year to IFFs. Therefore, there is no doubt that IFFs/TIFFs constitute a serious impediment to the DRM's efforts. The following assessment has been carried out based on Uganda Revenue Authorities' (URA) responses to the questionnaire and by reviewing Ugandan legislation and publicly available documents.

3.6.2. Policies and strategies on TIFFs

Uganda has a DRM strategy.[154] However, there is no specific policy or strategy that deals with TIFFs except the existing laws dealing with tax evasion, tax avoidance and TP issues. URA has a risk assessment mechanism on tax matters and there is an intention to focus on TIFFs although this is at a very early stage.

The URA has adopted some of the policy recommendations to combat TIFFs[155] and participated in OECD initiatives (such as EOI and the MAATM MC), reviewed tax policies and laws in view of these recommendations and have trained staffs. The URA is still focusing on implementing the recommendations in order to foster its DRM.

3.6.3. Tax abuse (evasion and avoidance)

Legal framework

Violation of tax law[156] is criminalised under the tax code, particularly the TPA.[157] Some of the offences covered by the TPA include failure to furnish a tax return (Section 54 of the TPA), failure to maintain proper records (Section 56 of the TPA), use of false TIN (Section 57 of the TPA), making false or misleading statements (Section 58 of the TPA) and aiding or abetting a tax offence (Section 60 of the TPA).

152 AUC, DRM and fighting corruption and IFFs, 2019, p. 153.
153 Baker, supra n. 1.
154 IMF, Uganda Tax Administration Diagnostic Assessment Tool (TADAT) performance Assessment Report- Technical report March 2019 Fiscal Affairs Department https://www.tadat.org/assets/files/Uganda_Final_PAR.pdf (accessed 4 May 2022.)
155 Such as Global Financial Integrity (GFI) reports, FACTI panel reports, AU/UNECA HLP report of 2015, UNCTAD reports, OECD Ten global principles in fighting tax crime, Tax Transparency in Africa.
156 Tax law includes the TPA, ITA, VAT Act, the Excise Duty Act, Lotteries and Gaming Act and any other Act imposing tax; see Schedule 2 of the TPA.
157 The Tax Procedures Code Act, 2014 (2021 Edition); available at https://www.ura.go.ug/openFileController/execute?path=//webupload//upload//download//staticContent//TOPMENU//9249//10389_Domestic-Tax-Laws-of-Uganda-Tax_Procedures_Code_Act_2014.pdf (accessed 23 Jan. 2023).

Regarding tax avoidance, the ITA[158] contains general and specific anti- avoidance provisions including:

- recharacterisation of income or deductions (Section 91 of the ITA) if one of the main purpose of a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme was the avoidance or reduction of liability to tax; or if a transaction does not have substantial economic effects; or a transaction has a form which does not reflect substance;
- anti-dividend stripping (Section 76 of the ITA);
- ultimate beneficial ownership requirement (Sections 2, 75 and 88 of the ITA); limitation on interest deductibility (Section 25 of the ITA); taxation of indirect transfers of assets (Section 79ga of the ITA); and
- limitations on benefits (Section 88 of the ITA).

Uganda has 9 DTAAs that contain some anti-abuse provisions.

Institutional set-up

The URA is responsible for the administration and collection of taxes which include the prevention, detection and investigation of tax fraud as well as for the implementation of anti- tax avoidance measures. There is an investigation department within the URA that has a mandate to investigate suspected cases of tax evasion, fraud and other serious violations of tax laws with a view to enhancing voluntary compliance in accordance with the established statutes.

The URA has a close working relationship with stakeholders like the Bank of Uganda, financial institutions, the police and the FIU, among others, to combat TIFFs.

3.6.4. Transfer (mis)pricing

Legal framework

Section 90 of the ITA covers the overall topic of TP. TP regulations were issued in 2011. The TP regulations draw substantially from the OECD TP Guidelines as supplemented and updated from time to time. Accordingly, the URA TP team uses the OECD TP Guidelines in dealing with TP cases. There are also practice notes on TP documentation.[159]

Institutional set-up – TP Unit

The URA has a unit that handles TP issues under the International Tax Section.

158 Income Tax Act Chapter 340 as amended, available at https://www.ura.go.ug/openFileController/execute?path=//webupload//upload//download//staticContent//TOPMENU//9249//10580_DT_LAWS_JULY_2021.pdf (accessed 23 Jan. 2023).

159 https://www.ura.go.ug/eventManagementController/getEventListByID?contentId=999000000000429&type=TIMELINE (accessed 23 Jan. 2023).

3.6.5. Trade mis-invoicing

Legal framework

The TPA and the EAC-CMA deal with trade mis-invoicing practices. The offences include making false or misleading statements (Sections 58 and 62H(c) of the TPA), failure to use an electronic receipting or invoicing system (Section 62E of the TPA), forgery of the electronic receipt or invoice (Section 62F of the TPA), misdeclaration of goods value on importation/exportation (Section 203 of the EAC-CMA), misclassification of goods importation/exportation (Section 203 of the EAC-CMA), and importation of counterfeit/prohibited goods (Section 200 of the EAC-CMA). It has been reported that the most notable fraud schemes for trade mis-invoicing involves registration of multiple companies that are non-existent for the purpose of trading fictitious sale and purchases.[160]

Institutional set-up

The URA deals with trade mis-invoicing through its Investigation Department together with the Customs and Direct Taxes Department as well as other government agencies such as the Uganda Police and Uganda National Bureau of Standards (UNBS).

Enforcement

Uganda uses ASYCUDA++ for its customs procedures to verify import and export declarations. The URA, in partnership with UNBS, introduced a Digital Tracking Solution (DST) as a track and trace platform that sends production and importation data for specific products immediately to the URA.[161] The DST involves the stamping of products with a digital stamp for tax purposes and helps to combat trade mis-invoicing. Taxpayers are also required to use the Electronic Fiscal Receipts and Invoicing System (EFRIS).[162] Once a taxpayer enrols on EFRIS, he will be able to track and validate business transactions in real time for efficient business management in the form of proper book-keeping and sales management. The URA uses EFRIS as a means to combat trade mis-invoicing.

The URA is also working, using increased automation services, to enhance its staff's ability to handle tasks efficiently.[163]

160 URA, URA NewsLetter, October-December Issue, P10 (URA 2022), https://www.ura.go.ug/openFileController/execute?path=//webupload//upload//download//staticContent//TOPMENU//9647//10680_URA_newsletter_December_2022_1.pdf (accessed 23 Jan. 2023).

161 URA, KAKASA- Digital Tax Stamps, available at https://www.ura.go.ug/openFileController/execute?path=//webupload//upload//download//staticContent//TOPMENU//10301//10306_DIGITAL_TAX_STAMPS__BROCHURE_compressed.pdf (accessed 23 Jan. 2023).

162 Id., p. 10.

163 Id.

Successes and challenges

Prosecution and penalising the offenders engaged in trade fraud have also proved effective in dealing with trade mis-invoicing. The DST and EFRIS contribute to increasing taxpayers' compliance and combatting TIFFs.

3.6.6. Transparency and exchange of information

Legal framework

The TPA, particularly, Section 41 provides that for the purposes of administrating any provision of a tax law, the URA has access, at all times and without prior notice, to any premises, any record, including a record in electronic format or any data storage device. Section 88 (3a and 3b) of the ITA provide that the URA shall facilitate EOI, including AEOI, for tax purposes under international agreements. Uganda has 9 DTAAs and the treaties provide for EOI. Uganda is a signatory to the MAATM MC and the ATAF Agreement on Mutual Assistance in Tax Matters (ATAF-AMATM). As a member of the EAC, Uganda is able to obtain customs information through the EAC CMA. Uganda joined the Global Forum and has committed to implement the AEOI standard by 1 September 2023.

Institutional set-up – EOI Unit

Uganda has an EOI unit within the URA with well trained staff. The EOI unit handles all matters relating to EOI as well as MAP and serves a broad support function across the URA.

Enforcement

In Uganda, different agencies have signed MoUs to facilitate sharing of information between different law enforcement authorities. Each of these MoUs identifies an official contact person at each participating agency who is then made responsible for ensuring that the agreements are effective and implemented in practice.[164] Uganda is at the level of implementing EOI options. Uganda made 69 EOIRs between 2014 and 2019 up from only two in 2012, identifying nearly USD 26 million in additional revenues.[165]

Successes and challenges

URA received effective responses to most of the EOIR and is engaging with its treaty partners on a few outstanding requests to achieve 100% resolution. Until the end of 2022, Ugan-

164 AUC, supra n. 8, at p. 88.

165 The amount refers to tax revenues that had not been previously reported in Uganda. See also OECD, Strengthening tax transparency to combat tax evasion, illicit financial flows and profit shifting in Uganda, (OECD 2021), available at Strengthening tax transparency to combat tax evasion, illicit financial flows and profit shifting in Uganda (oecd.org) (accessed 7 Mar. 2023).

da had realised significant revenues from EOI i.e. USD 96.5 million. It has also committed to implement AEOI standard by 1 September 2023.

3.6.7. Interagency cooperation

There is a cooperation agreement or MoUs between different law enforcement authorities to facilitate sharing of information to each other. Besides this, there is no formal interagency cooperation against TIFFs.

3.6.8. Capacity building

There are continuous capacity building initiatives in the URA with supports from development partners including the Netherlands and the US with various international taxation training. Various trainings were also delivered by the ATAF, the Global Forum and GIZ to URA staff on EOI principles as well as the application of EOI in cross-border transactions, including in TP cases. The TIWB also provided technical assistance to the URA to address aggressive TP practices and other base eroding payments such as interest deductibility rules. [166]

3.6.9. Stakeholders' engagement

There are different stakeholders who are cooperating with the URA in combatting TIFFs, such as the FIU, Bank of Uganda, Inspector of Government, State House Anti- Corruption Unit and the Uganda police with the following roles.

The FIU handle money laundering-related issues and forwards issues of tax evasion to the URA to handle. The Bank of Uganda share suspicious transaction reports and other information. The Inspectorate of Government handles corruption-related issues and shares information related to tax. The State House Anti-Corruption Unit handles corruption-related issues and shares information related to tax. The Uganda police also supports in the investigation of components of TIFFs.

3.6.10. Overall assessment

Ugandan tax laws as highlighted above have been changed to combat TIFFs and the URA have had a series of cases audited and investigated related to TIFFs. For example, under EOI, Uganda has realised approximately USD 96.5 million. A lot of recoveries were done regarding money laundering-oriented cases.

Uganda has committed to implement the AEOI standard by 1 September 2023. It is building the capacity of its tax crime investigators to fight against TIFFs.

166 Id.

4

Conclusion and recommendations

TIFFs pose systemic risks to the tax system of ATI partner countries by hampering their DRM efforts. They foster inequalities, create poverty, insecurity, inequality, and financial challenges, undermine public confidence and trust in all the selected countries. The resulting effects of TIFFs also impede the implementation of the UN 2030 Agenda and the Agenda 2063, among other initiatives, of these countries.

Even though most ATI partner countries have formulated or are developing DRM strategies or national development plans or economic policies with long-, medium- and short-term revenue targets, none of the respondent ATI partner countries indicated a specific policy or strategy that refers to, or deals with, TIFFs as a threat to their DRM efforts and developments. Most countries underlined that their policies and strategies to counter TIFFs stem from existing tax laws and the AMLA which deal with almost all the components of TIFFs in the form of tax evasion, tax avoidance, transfer mispricing and trade mis-invoicing.

The initiatives that have been taken (and are being taken) by ATI partner countries on TP, transparency and EOI as well as commitments to international cooperation are encouraging despite a range of differences that exist in the countries' domestic provisions and their level of enforcement.

This study confirms that implementation of TP issues and EOI are challenging in terms of collecting information for TP and EOI purposes and a consolidated framework to coordinate the working relationship among different units or institutions. It is important to emphasise that trade mis-invoicing and its negative effects are not well considered. The level of interagency cooperation in combatting TIFFs is also very low as compared to the consolidation in countering against money laundering.

Most countries have mentioned that they have human and technological capacity limitations as the main challenges in tackling TIFFs, including in understanding the prevalence of IFFs and TIFFs and the statistical methodologies to calculate the tax revenues the countries lose through TIFFs despite the support of different international organisation and donor countries.

Based on the practices, lesson learnt, successes and challenges shared by the ATI partner countries involved in this study, we recommend the following to all ATI partner countries:

- *Develop a robust policy and legal framework against TIFFs – a holistic approach to tackle TIFFs***:** Political commitment and leadership, with clear and comprehensive policy, and legal framework, as well as national risk assessment strategies are needed, including working definition of IFFs/TIFFs. Also support awareness creation forum and tax compliance behaviours.
- *Modernise your institutional framework***:** Set up, modernise and strengthen institutions and units regarding tax abuse, TP and EOI and enhance customs enforcement and analysis of cross-border transactions to better detect and counter trade mis-invoicing.

- *Create an effective interagency cooperation/framework – analysis of TIFFs depends on various facts and circumstances and may involve different institutions***:** Inter-agency working group or Joint Task Force on TIFFs & integration of databases and EOI on TIFFs. When government agencies have access to different types and sources of information and they analyse data through the spectrum of their individual mandates, they often miss red flags indicative of TIFFs or information relevant to the mandates of other agencies.[167]
- *Work on capacity building***:** Capacity-building scheme of agencies in charge of combatting TIFFs. A capacity-building scheme combines enhancing human capacity by enabling employees to acquire new knowledge and skill in tax matters through specialised trainings and by providing them with the required tools and technological infrastructure such as databases for implementation of EOI options and TP rules as well as for tax audits and investigations including on customs declarations. The capacity-building scheme to enhance human capacity may include specialised training on:
    - interpretation and application of tax treaties including anti abuse provisions and the relation with domestic tax laws;
    - TP rules and their applications in cross-border transactions;
    - BO and EOI options, standards, principles, and their application in domestic and cross-border context;
    - tax audits, investigation techniques and best practices in managing tax cases including on customs to counter trade mis-invoicing;
    - enhancing interagency cooperation and information sharing mechanisms;
    - methodologies to measure prevalence of, and revenue loss through, IFFs/TIFFs; and
    - implementation of best practices and recommendations to combat TIFFs.
- *Enhance transparency, EOI and international cooperation:* Large-scale tax evasion and tax avoidance practices often involve financial flows across borders, raising the need for international cooperation. Therefore, TIFFs assessment depends on access to relevant information on the local and global operations of taxpayers. Moreover, countries cannot effectively tackle TIFFs alone because the cross-border nature of TIFFs necessitates international cooperation and coordination. The TIFFs issue should not just be confined to what is leaving the country, but equal weight should also be given to what is flowing into the country i.e. imported capital. Therefore, eliminating or mitigating TIFFs is difficult without transparency, real commitment, and all-level international engagement.

167 J.P. Brun et al, Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes p. xiii (WBG 2022).

There are actions that can be taken by development partners or donors to improve the effectiveness of tackling TIFFs including:

- encouraging countries to join the international tax transparency and EOI forums including the MAATM MC. The more jurisdictions join the initiative, the less room there is for cross-border illicit financial flows or TIFFs;
- increasing the awareness and acceptance of the threat of TIFF by the relevant government officials to gain their practical commitment and to foster interagency cooperation; and
- continue to support training and capacity-buildings initiatives.

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