



The Platform for Collaboration on Tax Developments in International Tax

1. What is the Platform?

The Platform for Collaboration on Tax ('the Platform') was established in April 2016 by four leading international organisations whose focus includes fiscal issues: the International Monetary Fund ('IMF'), the World Bank, the United Nations ('UN') and the Organisation for Economic Cooperation and Development ('OECD'). The Platform brings together fiscal policy experts from all these organisations and its activity assists them in "the design and implementation of standards for international tax matters, strengthens their ability to provide capacity-building support to developing countries, and helps them deliver jointly developed guidance"¹.

2. The Platform and the BEPS initiative

The creation of the Platform is a result of the base erosion and profit shifting ("BEPS") initiative which was launched in 2012 by the G20. The G20 requested the OECD to develop an action plan for tackling the problem of aggressive tax planning which was eroding the tax base across the globe at a time when government revenues were already under huge pressure in the aftermath of the 2008 financial crisis. This tax leakage was christened 'BEPS' and the OECD working with many non-member states, has produced a programme of 15 actions to help states to coordinate combatting aggressive tax planning³.

At the time the BEPS actions were being developed concerns were raised that the initiative only reflected the interests of the major economies of the G20 and OECD and that those of developing countries were being ignored or even prejudiced. In fact, the G20 commissioned the OECD to look specifically at the impact of BEPS on developing countries when the initiative was launched. As a result, a two-part report was issued in 2014⁴ highlighting the following BEPS issues as particularly important for developing countries:

- a) Excessive payments to related parties related to loans, services and intangibles;
- b) Supply chain structures designed to shift commercial risks and associated profits to low tax jurisdictions;

- c) Difficulties in obtain information to enforce legislation, particularly transfer pricing rules;
- d) Abuse of double tax treaties to obtain unintended tax benefits;
- e) Use of offshore structures to avoid tax on gains related to assets located in the relevant jurisdiction; and
- f) Pressure to implement wasteful tax incentives to attract investments.

Whilst most of these are covered in the 15 actions to combat BEPS developed for the G20, items e and f are outside the scope of the 15 actions and it was felt that developing countries would need support to implement the BEPS actions and address these additional issues.

3. Work programme of the Platform

The primary focus of the Platform so far has been assistance to developing countries in combating BEPS. The conclusions of the 2014 report, outlined above, have provided the basis for its work programme. Most of the output to date has taken the form of 'toolkits' on specific issues, which are intended to provide practical guidance for fiscal policy makers in developing countries and draft amendments to legislation and tax treaties in order to implement the policy choices made. The toolkits issued to date cover the following⁵:

- a) Options for low income countries' effective and efficient use of tax incentives for investment: this issue was highlighted in the 2014 report but is outside the scope of the 15 BEPS actions. The concern is that tax incentives, such as tax exemptions and holidays may be given without proper evaluation of their effectiveness in promoting beneficial investment, possibly as a result of competition to attract investment between states which can result in a 'race to the bottom'.

The toolkit provides guidance on the design and governance of tax incentives and emphasises the benefits of cooperation between states to avoid harmful competition.

- b) Addressing difficulties in accessing comparable data for Transfer Pricing analyses: the commonly used commercial databases of publicly available information mainly draw on data sources in developed economies which do not necessarily reflect conditions in developing economies.

The toolkit provides detailed guidance with practical examples to assist tax authorities in using such data, suggests consideration of 'safe harbours'⁶, and specific guidance on pricing of commodity transactions.

- c) Taxation of offshore indirect transfers: this addresses the use of offshore structures to defer or avoid tax on capital gains arising from disposals of valuable assets such as licences to explore for and exploit mineral resources.

This toolkit is discussed in our previous publication Taxation of Indirect Disposals at this link <http://crystaladvocates.com/?mdocs-file=22135>

The toolkit for transfer pricing documentation is still in draft and comments were invited by 8 November 2019. This provides guidance to tax policy makers and tax authorities on how to implement documentation requirements and effectively use the resulting information.

Future toolkits have been announced that will cover the following areas:

- d) Tax Treaty negotiation: which is expected to guide developing countries on how to ensure that tax treaties do not excessively erode their domestic tax base;
- e) Base eroding payments: which is expected to specifically address the use of excessive payments of interest, royalties and management fees to deplete the domestic tax base; and
- f) Assessment of BEPS risks: which is expected to provide guidance on detection, quantification and mitigation of tax avoidance.

It is planned to issue all of these before the middle of 2020. A proposed toolkit on supply chain restructuring has been dropped from the programme as this was felt to duplicate content of other toolkits focusing on transfer pricing.

4. The future

The Platform issued its progress report for 2018-19 in June 2019⁷. This makes it clear that the Platform's future activities are not to be limited to the finalisation of the planned toolkits. Additional areas highlighted in the report include:

- a) Close coordination with other international bodies focusing on the tax and development agenda including the Addis Tax Initiative⁸;
- b) Promoting coherent and consistent approaches to tax internationally;
- c) Supporting the implementation of the toolkits and more general capacity building;
- d) Identifying and mitigation ‘spillovers’, i.e. the ways in which developed countries’ approaches to international taxation may adversely impact developing countries. Assisting those countries to have an influence on the evolution of measures on BEPS and similar issues; and
- e) Integrating its work on tax with the broader agenda in respect of sustainable development goals, particularly in the areas of health, education, gender, inequality, environment and infrastructure.

The Platform is now an established feature of the international tax landscape and its work is likely to play an increasingly important role in the development of new norms of international taxation in the post-BEPS world. It will be particularly important for developing economies like Uganda as they shape their future fiscal policy.

(Endnotes)

- ¹ For the source of this quotation and further information on the Platform please see: <https://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm>
- ² The G20 is a group of 20 leading economies established in 1999. Its members are Argentina, Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. Spain is a permanent guest invitee.
- ³ Further details of the BEPS actions can be found in this Cristal Advocates’ publication: <http://cristaladvocates.com/?mdocs-file=22083>
- ⁴ See <https://www.oecd.org/tax/part-1-of-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf> and <https://www.oecd.org/ctp/tax-global/part-2-of-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>
- ⁵ These can be downloaded from the OECD website: <https://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm>
- ⁶ Ranges of prices or profit margins which are deemed acceptable without the need for further substantiation.
- ⁷ <https://www.oecd.org/ctp/tax-global/platform-for-collaboration-on-tax-progress-report-2018-2019.pdf>
- ⁸ The Addis Tax Initiative focuses on improving the efficiency of tax systems, particularly in developing economies. See <https://www.addistaxinitiative.net/>

Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.



Contacts for this Publication



Denis Yekoyasi Kakembo

dkakembo@crystaladvocates.com
+256 751 834 168

Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



Bill Page

bp@crystaladvocates.com

Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■



John Teira

jteira@crystaladvocates.com
+256 704 493 997

John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

He holds a Bachelor of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■



Dickens Asimwe Katta

dasiimwe@crystaladvocates.com
+256 772 370 021

Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



Francis Tumwesige Ateenyi

ftumwesige@crystaladvocates.com
+256 702 540 936

Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

He holds a Master of Laws degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom and various other qualifications. ■



- Energy & Infrastructure
- Business support
- Employment
- Banking & Finance
- School of Professional Excellence
- Tax
- Company Secretarial & Trustee Services
- Public Law & Policy Advocacy
- Dispute Resolution
- Corporate and Commercial

Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
Tel: +256 (414) 671 274
Email: admin@cristaladvocates.com
www.cristaladvocates.com