

PROGRAMME & SPEAKERS

IBFD Masterclass

Tax Structuring in Africa – Selected Critical Issues

22–23 May 2023

Summary

As a prelude to the IBFD CSAT Africa Tax Symposium, we are delighted to present the third edition of our international tax and transfer pricing-focused masterclass on African taxation, providing a unique learning platform for African tax practitioners. This two-day advanced-level course will provide participants with a platform to learn, share and debate the most pressing issues in international taxation and transfer pricing (including permanent establishment and transfer pricing cases), capital gains taxation of immovable property, natural resources and shares (including taxation of indirect transfer of assets), withholding tax planning and substance considerations. The IBFD CSAT Africa Tax Symposium will take place at the same location from 24 to 26 May 2023.

Overview and Learning Objectives

This two-day advanced-level course aims to provide African tax professionals with practical and comprehensive coverage of the most important issues in international taxation and transfer pricing. A brief outline of the objectives per day are set out below:

Day 1: Monday, 22 May

After a brief overview to the latest tax policy, legislative and case law developments on the international stage (including at the OECD, UN and selected jurisdictions), participants will have the opportunity to discuss with instructors and peers the relevance and practical impact, of those developments on foreign investments and on their daily work in Africa.

We will examine the latest trends in tax treaty policy in Africa and the current impact of tax treaty anti-avoidance rules that are being incorporated in tax treaties in the region. These developments might all result in increased disputes and litigation with tax administrations.

In recent years, a large part of the international tax agenda has been focussed on addressing the tax challenges of the digitalisation of the economy. A full session is dedicated to the international work on the matter. We will consider the progress of the work of the OECD/Inclusive Framework on BEPS on the two-pillar solution (Pillars 1 and 2) and its challenges for African countries. We will also examine the new article on income from automated digital services of the 2021 UN Model Convention and its potential economic impact for African countries as well as possible implementation challenges. We will then consider unilateral measures adopted by countries and, within this context, the ATAF suggested approach to drafting legislation on digital services tax.

Day 1 ends by analyzing two topics of relevance in cross-border business activities in Africa, the tax treatment of cross-border services and withholding tax structuring for effective repatriation of income. Profit repatriation and structures put in place for the avoidance of withholding taxes in cross-border situations. Participants will learn the impact of tax treaties and the common interpretation issues arising from treaty application. Cases involving triangular situations, beneficial ownership and the application of anti-abuse measures will also be presented.

Day 2: Tuesday, 23 May

The taxation of capitals gains and indirect transfers of assets continues to be an area of in Africa. Multinational enterprises (MNEs) often utilize offshore structures in their tax planning in respect of capital gains taxes on the sale of assets in Africa. A full session is dedicated to taxation of capital gains under tax treaties with a special focus on shares, immovable property and natural resources rights. Thus, understanding the core issues, risks and possible outcomes concerning the topic, as well as some of the most prominent court cases, is very desirable for tax professionals from both private and public sector.

We will examine substance considerations and anti-abuse measures. Past years have seen great focus on substance considerations as more and more countries revised their domestic provisions, mainly in line with the recommendations under the OECD BEPS package, including the minimum standards, the implementation of which is being overseen under the Inclusive Framework on BEPS. The Inclusive Framework is an initiative aimed at achieving broad implementation of the BEPS measures widely i.e. outside the OECD member countries.

The transfer pricing policies of MNEs are under greater scrutiny, especially post-BEPS. Broader issues in transfer pricing are also the subject of controversy in many countries, including in Africa. We have dedicated a session to recent transfer pricing developments that are of relevance to Africa. The session will examine specific topics of the 2022 OECD Transfer Pricing Guidelines, such as, intragroup financial transaction and particular challenges for developing countries in the application of these guidelines, including the lack of comparables data and the application of the transactional profit split method. The session will also discuss leading global transfer pricing cases and their potential lessons for Africa. Participants will learn the arguments put forward by taxpayers, tax administrations and courts from different jurisdictions to solve complex transfer pricing issues that practitioners may face in Africa.

The course ends with a session dedicated to the concept of permanent establishment (PE). PE continues to be of great relevance to African professionals. We will examine the issue of artificial avoidance of PEs in the context of corporate tax structuring. We will consider examples of approaches to address “abusive” practices (including diverted profit taxes and penalties), transfer pricing and areas of controversies managing and dispute resolution, along with examples of recent international case law. Indeed, several judgments have recently been rendered that provide food for thought for tax professionals on how to structure foreign operations.

Field of Study

Taxes

Who Should Attend?

The course is suitable for professionals, such as tax managers and directors, in-house tax and accounting specialists in commerce and industry, practitioners in tax advisory firms, and government officials who deal with international tax structuring or transfer pricing in Africa and wish to gain a deeper technical understanding of relevant domestic law, tax treaty and transfer pricing developments.

Course Level and Prerequisites

This is an advanced-level course. Participants taking this course will be expected to have a good understanding of at least one national tax system, transfer pricing and the fundamentals of double tax treaties.

Day 1

09.00 - 09.20	Welcome and IBFD Introduction
09.20 - 10.45	Current Issues in International Taxation and Transfer Pricing from around the Globe – Impact on African Inbound and Outbound Investments (Nishana Gosali and Luis Nouel) <ul style="list-style-type: none">> OECD/G20 Inclusive Framework (IF) on BEPS and BEPS minimum standards implementation> Work of the Committee of Experts on International Cooperation in Tax Matters> Latest legislative and case law developments on the international taxation and transfer pricing
10.45 - 11.15	Break – Refreshments
11.15 - 12.45	Trends in Tax Treaty Policy in Africa: Impact of Treaty Anti-Avoidance Rules (Aisha Aize Isa and Luis Nouel) <ul style="list-style-type: none">> Update on the impact of the Multilateral Instrument on African tax treaties> 2021 UN Model Double Taxation Convention and its regional influence> Treaty anti-avoidance rules in Africa and interaction with domestic tax law> New PE provisions and beyond the PE concept in African tax treaties<ul style="list-style-type: none">> Provisions on activities in connection with the exploration and exploitation of natural resources> Insurance PE> Scope and Interaction between the UN Article 12A and 12B> UN Committee of Experts – discussion on the treatment of software
12.45 - 13.45	Lunch

- 13.45 - 15.30 **Addressing the Tax Challenges of the Digitalized Economy**
- (Carlos Gutiérrez Puente and Aisha Aize Isa)
- › OECD/IF Pillars 1 and 2
 - › 2021 UN Model Convention: Income from automated digital services
 - › Examples of unilateral measures
 - › ATAF - approach to drafting legislation on digital services tax
 - › Practical considerations
- 15.30 - 16.00 Break – Refreshments
- 16.00 - 17.00 **Cross-Border Business Activities in Africa – Cross-Border Services and Withholding Tax Structuring**
- (Nishana Gosai)
- › Tax aspects of:
 - › cross-border services in African countries and
 - › withholding tax structuring: Effective repatriation of income out of Africa
 - › Domestic practices and anti-abuse rules
 - › Treaty treatment: Beneficial ownership, service PE, fees for technical services and provisions of tax treaties from the region

Day 2

- 09.00 - 10.45 **Taxation of Capital Gains and Offshore Indirect Asset Transfers: What is the Current State of Play?**
- (Carlos Gutiérrez Puente and Yvette Nakibuule Wakabi)
- › Taxation of capital gains under the OECD and UN Models with a special focus on immovable property, including natural resources rights and shares
 - › Offshore indirect transfer of assets: critical issues
 - › Examples of domestic legislation in Africa and its application in practice
 - › Impact of BEPS measures, the Multilateral Instrument and the 2017 OECD Model
 - › Toolkit of the Platform for Collaboration on Tax (IMF, OECD, UN, World Bank)
 - › 2021 UN Model Convention: Specific provisions on indirect transfer of assets
- 10.45 - 11.15 Break – Refreshments

- 11.15 - 12.45 **Substance Considerations and Anti-abuse Measures: Getting it Right**
- (Shee Boon Law)**
- International tax structuring and post-BEPS substance considerations
 - The importance of substance considerations in different tax structuring techniques
 - Examples of minimum substance requirements in key jurisdictions (UAE, Mauritius and the Netherlands)
 - Substance and application of the PPT under tax treaties
 - Substance and harmful tax competition
 - Substance and transfer pricing considerations
- 12.45 - 13.45 Lunch
- 13.45 - 15.30 **Recent Transfer Pricing Developments: Impact for Africa**
- (Monique van Herksen)**
- Recent developments in transfer pricing
 - 2022 OECD TP Guidelines
 - Allocation of risks and non-recognition
 - Remuneration spectrum
 - Intragroup financial transactions
 - Challenges in the application of 2022 OECD TP Guidelines
 - PCT toolkit addressing difficulties in accessing comparables data
 - Areas of controversy
 - Application of the transactional profit split method
 - Cases from around the Globe: Potential lessons for Africa
- 15.30 - 16.00 Break – Refreshments
- 16.00 - 17.00 **Artificial Avoidance of Permanent Establishments: Experience from Around the Globe and Potential Lessons for Africa**
- (Shee Boon Law)**
- Corporate tax structuring and artificial avoidance of permanent establishments
 - Examples of approaches to address ‘abusive’ practices
 - Diverted profits taxes and anti-abuse rules
 - Penalties
 - Permanent establishments and transfer pricing disputes
 - Selected examples of recent international case law

Instructors



Carlos Gutiérrez P. is a Principal Associate at IBFD Tax Services. He is involved in government consultancy projects, client research, and in the development and teaching of training programmes for tax authorities and the private sector, as well as regular course programmes.

Prior to joining IBFD, Mr Gutiérrez was a legal adviser with the international legislation department of the Chilean tax administration (*Servicio de Impuestos Internos, SII*), which is responsible for tax treaty negotiation and interpretation, and for drafting direct tax legislation. He also directly participated in numerous tax treaty negotiations.

Mr Gutiérrez obtained his law degree at the University of Chile and a master's degree (LL.M.) at Queen Mary College, University of London. He has represented IBFD at various seminars and conferences and has taught regularly for IBFD International Tax Training, and for universities in Latin America and the Netherlands. He was especially directly involved in the design and development of the Advanced Master's Programme in International Tax Law (LL.M.) that was jointly offered by the University of Amsterdam (UvA) and IBFD until 2022.



Nishana Gosai is the Group Tax Executive at Adcorp. Notably, Ms. Gosai has worked at the South African Revenue Services where she headed the transfer pricing unit. She also held various positions in two of the Big Four audit firms, as well as a leading mining firm and was Partner at the law firm of Baker McKenzie where she was the Africa Head of Transfer Pricing. Ms Gosai is a member of The South African Institute of Chartered Accountants (SAICA) and the tax court and co-author of the "Africa Transfer Pricing Practice Guide: A South African Perspective".



Luis Nouel is an experienced international tax professional who currently leads the Latin American and the Africa and Middle East Knowledge Groups in IBFD's Knowledge Centre in Amsterdam. Mr. Nouel regularly teaches courses in international tax law and transfer pricing to governments, in-house tax departments and advisers around the world. He has also represented IBFD at various conferences and seminars on international tax matters.

Prior to joining IBFD, he worked for the International Tax Services group of EY in the Netherlands and in Venezuela, where he assisted multinational enterprises in dealing with issues related to international tax. Mr. Nouel started his career with the Venezuelan tax authorities, where he was responsible for tax treaty negotiations and for drafting direct and indirect tax legislation, and provided legal support to the National Audit Office. He has a law degree specializing in Tax Law from the Catholic University Andrés Bello, Venezuela, and an advanced LLM in International Taxation from the University of Leiden, the Netherlands.



Aisha Aize Isa is a seasoned tax practitioner who specializes in international taxation, IBFD's new Manager for the Centre for Studies in African Taxation (CSAT) and Managing Principal for Africa and the Middle East Department within the IBFD Knowledge Centre in Amsterdam. Ms Isa is an expert in tax treaties and the taxation of the digitalized economy and has been extensively involved in providing training in these areas. She is also a facilitator for the African Tax Administration Forum (ATAF), which provides technical assistance to governments on tax treaty negotiations and double taxation agreements.

Prior to joining IBFD, Ms Isa served as a Manager of the International Tax Policy Division at the Federal Inland Revenue Service, Nigeria, where she was a tax treaty negotiator and involved in policy and legislation development on international & domestic tax issues. Her work primarily focused on developing domestic policies for the taxation of cross-border transactions and developing the domestic implementation framework for international tax rules and standards. She also served as a focal officer on policies on international tax in general, representing Nigeria in several international committees and working groups.



Yvette Nakibuule Wakabi is a Senior Associate for Sub-Saharan Africa in the IBFD Africa and Middle East department. She has tax technical editorial responsibility for publications on the Sub-Saharan Africa region and is a tax specialist on several countries in the region. She is part of the team that organizes the annual Africa Tax Symposium, where she has also participated as a speaker. Ms Wakabi is also involved in various tax research studies and projects in Africa such as value added tax with respect to the digital economy, base erosion and profit shifting assessment for developing countries, tax incentives and tax treaty analysis, to mention but a few. She is also a speaker and international tax trainer on various international tax topics.

Prior to joining IBFD in April 2019, Ms Wakabi worked at BDO East Africa as a Senior Tax Advisor responsible for clients' tax compliance (payroll and direct and indirect taxes), tax planning, tax computations and preparation of tax returns, as well as special work such as tax due diligence, tax health checks and developing transfer pricing policy documentation.

Ms Wakabi has an Advanced Diploma in International Taxation (ADIT) from the UK Chartered Institute of Taxation (CIOT), a Post-Graduate Diploma in Tax and Revenue Administration (PODITRA) from the East African School of Taxation and a Bachelor of Commerce degree (BCom – Finance) from Makerere University, Uganda. Ms Wakabi is currently an MSc Taxation candidate at the University of Oxford, England.



Shee Boon Law currently holds the position of Consultant, International Tax and Transfer Pricing expert based in the Netherlands. In this role, he advises clients on corporate international tax structuring for outbound investments, as well as tax policy and controversy approaches under international and EU law. Mr. Law assists clients with their outbound tax concerns by leveraging his international experience and his extensive global network of contacts.

Mr. Law brings with him over 20 years of tax advisory experience based on a unique blend of international background (i.e. with the New Zealand tax authorities, the OECD in France, IBFD in the Netherlands and DLA Piper in the United Kingdom and the Netherlands).



Monique van Herksen is a partner at Simmons & Simmons specialising in transfer pricing, dispute resolution and related international tax issues. Her practice includes advising multinational enterprises on global audit compliance, audit management and risk assessment related to transfer pricing, permanent establishment exposure and business restructurings in the jurisdictions where they do business. Ms van Herksen handles audit settlements, advance pricing agreements and competent authority requests. She provides hands-on assistance and strategic advice on tax and transfer pricing audits and discussions with tax authorities and local tax counsel, where she is able to call on her experience with leading controversy teams and working for the US Internal Revenue Service.

Ms van Herksen also serves as transfer pricing expert on the Subcommittee on Transfer Pricing of the UN Tax Committee and assists the United Nations' Financing for Development Office with training and materials for tax authorities in developing countries. She has conducted trainings for organisations such as the Inter-American Centre of Tax administrations (CIAT) and the African Tax Authorities Forum (ATAF). She also has been teaching transfer pricing at leading universities for over 20 years.

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