IBFD Masterclass
Tax Planning in Africa – Selected Critical Issues
18 – 19 May 2020
Summary
As a prelude to the 6th IBFD 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 be able 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 and natural resources, withholding tax planning and substance considerations. The 6th IBFD Africa Tax Symposium will take place at the same location from 20 to 22 May.

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, 18 May

After a brief introduction to the latest tax policy, legislative and case law developments on the international stage (including at the OECD, UN and selected jurisdictions notably the US) 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.

Additionally, we will examine the latest trends in tax treaty policy in Africa and the likely 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.

The taxation of capitals gains and offshore indirect transfers continues to be of great focus in Africa. A full session is dedicated to taxation of capital gains under tax treaties with a special focus on immovable properties (and natural resources rights). Multinational enterprises (MNEs) often utilize offshore structures in their tax planning in respect of capital gains taxes on the sale of assets in Africa. 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.

The concept of “permanent establishment” (PE) continues to be of great relevance to African professionals. We will bring the PE concept and the most recent international cases on the topic into focus. Several judgments have recently been rendered that provide food for thought for tax professionals on how to structure foreign operations involving offices, premises, warehousing, distribution centres, promotion and sales activities as well as foreign secondments.
Day 2: Tuesday, 19 May

We will begin with a session on 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.

The past two 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 Base Erosion and Profit Shifting (BEPS) package, including Minimum Standards whose implementation is being overseen under the Inclusive Framework. The Inclusive Framework is an initiative aimed at achieving broad implementation of the BEPS measures widely i.e. outside the OECD member states.

The transfer pricing policies of MNEs are under greater scrutiny especially post-BEPS with wide ranging requirements on transparency being implemented by most countries. However, other wider issues in transfer pricing are the subject of controversy in most countries, including in Africa. We have dedicated a session to recent transfer pricing cases that are of relevance to Africa. The instructors will discuss the leading global transfer pricing cases to examine the strategic narrative taxpayers or tax administrations present to win such cases. 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 presentation on African developments to tie in some regional and domestic regulatory changes with the already discussed global international tax and transfer pricing trends.

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.
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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

► Inclusive Framework (IF) and BEPS Minimum Standards implementation
► Status of the OECD/IF work on tax challenges of the digitalisation of the economy (Pillars 1 and 2)
► Unilateral BEPS-motivated domestic law measures
► Selected jurisdictions (Australia, Canada, European Union, Netherlands, United Kingdom and United States)

10.45 - 11.15
Break – Refreshments

11.15 - 12.45

► The Multilateral Instrument and its practical impact on African tax treaties
► 2017 UN Model Double Taxation Convention and its regional influence
► Treaty anti-avoidance rules in Africa and interaction with domestic tax law
► New PE provisions in African tax treaties

12.45 - 13.45
Lunch

13.45 - 15.30
Taxation of Capital Gains and Offshore Indirect Asset Transfers: What is the Current State of Play?

► Treatment of capital gains under the OECD and UN Models
► Offshore indirect transfer of assets: critical issues
► Impact of BEPS measures, the Multilateral Instrument and the 2017 update to the OECD/UN Models
► Discussion draft of the Platform for Collaboration on Tax (IMF, OECD, UN, World Bank Group)

15.30 - 16.00
Break – Refreshments

16.00 - 17.00
Current Court Cases on Permanent Establishments from Around the Globe: Lessons for Africa

► Recent international case law on:
  ► fixed place of business PEs
  ► sales and marketing activities, and activities of other entities or through agents
  ► e-commerce, digital economy and IT servers
  ► preparatory and auxiliary activities
  ► construction PE
  ► fragmented activities

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Day 2

09.00 - 10.45

Withholding Tax Planning: Effective Repatriation of Income out of Africa

- Domestic practices and anti-abuse rules
- Treaty treatment: beneficial ownership, new provisions of the Multilateral Instrument and of tax treaties from the region
- Other considerations
  - transfer pricing
  - rules limiting deductibility of interest
  - anti-hybrids rules

10.45 - 11.15

Break – Refreshments

11.15 - 12.45

Substance Considerations and Anti-abuse Measures: Getting it Right

- General considerations
  - substance
  - case law
  - EU approach – listing of non-cooperative jurisdictions
- Examples of substance requirements in key jurisdictions (UAE, Mauritius and the Netherlands)
- Substance and application of the PPT under tax treaties
- Substance and harmful tax competition

12.45 - 13.45

Lunch

13.45 - 15.30

Recent Transfer Pricing Cases from around the Globe: Lessons for Africa

- Intra-group financing
- Intangibles
- Intra-group services
- Commodity transactions
- Selected jurisdictions: Australia, Canada, European Union, Netherlands, United Kingdom, United States, etc.
- Selected transfer pricing cases from Africa

15.30 - 16.00

Break – Refreshments

16.00 - 17.00

African Tax Highlights – Some Attention Points for Cross-Border Business Activities in Africa

- Tax aspects of cross-border services in African countries
- OECD/IF work on tax challenges of the digitalization of the economy and its impact on Africa
  - Examples of unilateral measures
  - Practical considerations