Fourth Session, UN Tax Convention Negotiations
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Article 5 - Fair allocation of taxing rights - Allocation of taxing rights

Intervention by Everlyn Muendo, TJNA

Thank you for the opportunity to speak.

We acknowledge that the intention of member states so far with article 5 has been to ensure that both residence and source countries get taxing rights by acknowledging both supply and demand side factors of production.

However, it needs to be clear that the purpose of this article is to outrightly address the historical imbalances of taxing rights between source and residence countries. As net importers of capital, African countries are often source countries. International tax rules that limit taxation at source have been cemented by a vast treaty network.

For instance, the persistence of nexus rules based on physical presence has severely limited source taxation despite significant economic activities taking place therein. The implementation of article 5 requires the renegotiation of double taxation agreements. It is concerning that some member states have alleged that renegotiation of double taxation agreements would be a violation of international law on the basis that it would create obligations for third parties. As clearly stated by the AU, this would not create a legal obligation for third parties. And

Finally, as civil society we are also not comfortable with the idea of a provision on taxing a portion of income. This would go against the spirit of the article as it implies that there would be a limitation to the extent that source countries can tax.