COMMENTS

ATAF'S WRITTEN COMMENTS ON ALLIANCE SUD PROPOSAL

22 June 2022

This is a progressive proposal toward seeking fairness in the allocation of taxing rights between the source and residence jurisdiction. The current rules favour residence jurisdictions to the detriment of developing countries which are primarily source jurisdictions. ATAF has, on numerous occasions, pointed out that Pillar 2 did not adequately address this fundamental issue.

ATAF has stated on numerous occasions that a source-based rule such as the so-called Undertaxed Payments Rule (UTPR) or Subject to Tax Rule (STTR) should be the primary rule under Pillar Two to assist in redressing the above imbalance in the allocation of taxing rights. However, we did not get this outcome as the Global Anti-Base Erosion (GloBE) rule order applies the so-called Income Inclusion Rule (IIR) in priority of the UTPR with very limited circumstances for applying the UTPR.

It is against this background we would support your proposal of calling the Switzerland government to waive their rights for applying IIR in the circumstances where the Ultimate Parent Entity is headquartered in Switzerland. There are several Swiss MNEs that would be in scope of the GloBE rules, and they operate in several African countries. Whilst this waiver may not lead to the entire amount being allocated to African countries, a part of the overall amount may be allocated to some African countries and other developing countries through the application of the UTPR. We also think if the proposal was approved by the government, it would amount to a significant move towards demonstrating the unfairness of the GloBE rules towards the developing countries, and for this reason, we support the proposal.

The other important issue would be to call for the Swiss government to support the implementation of a broad in scope Subject to Tax Rule (STTR). The STTR is an important rule that has benefits for source countries if implemented. It would help many of these countries to protect their tax bases from base erosion. However, for the rule to be effective in achieving this objective, it needs to be broad in scope to include interest, royalty, all services payments and capital gains. Our members frequently report all these payments constitute significant BEPS risks.

Aside from the current tax reforms, we also think a revision of the existing tax treaties with African and developing countries would significantly help, especially by ensuring that more taxing rights are allocated to the source jurisdictions. For example, by ensuring there is a broader definition of a permanent establishment, including technical fees Article, broader definition on royalty payment to include items such as software payments etc. as well as having anti-treaty abuse rules that help to protect source jurisdictions.