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More than renegotiating restrictive double taxation agreements, Mozambique must approve a policy to curb tax abuses

The growing number of cases presented in previous sessions clearly demonstrates that the renegotiation of restrictive agreements with tax havens must be seen as an urgent imperative by Mozambique. The country must move forward decisively with the renegotiations so that, like other countries in the region, it can recover its tax rights, ensuring that its economic interests are not compromised by "treaty shopping" practices.

There is no doubt about it. Mozambique's network of tax treaties, particularly those signed with Mauritius and the United Arab Emirates, has been a factor in perpetuating poverty in the country, by allowing multinationals to "steal" millions of dollars from Mozambicans annually in the form of tax abuses. Evidence has been produced and disseminated on the subject, consensus has been reached and political will has been created at the legislative, executive and other relevant levels on the need to stop abuses. The country is currently faced with the challenge of not only taking a decisive step and engaging the target countries to renegotiate or, in an extreme scenario, terminate these agreements, but also of adopting a policy to inform negotiations on future treaties.

Abuse of tax treaties[1] by multinationals to avoid paying their fair share of taxes has led a considerable number of African governments to cancel their agreements with tax havens such as Mauritius and the United Arab Emirates over the years. These agreements are exploited by large foreign companies, mainly in the extractive sector, in tax evasion schemes, leading to illicit financial flows and huge tax losses for the public treasury.

Many of these treaties are based on the outdated Organisation for Economic Co-operation and Development (OECD) model, which typically shifts taxing rights from the country where the economic activity occurs (the "source State") to the country where the investment originates (the "resident State"). This imbalance in taxing rights is further exacerbated by the fact that Mozambique is a significant recipient of investment from these countries, while Mozambique's investment in return is minimal. As a result, Mozambique's tax treaties tend to be one-sided, benefiting foreign companies and investors more than local Mozambican businesses.

Mozambique has signed 10 tax treaties, two of which (with Botswana and Ethiopia) have not yet been ratified.[2], and is currently negotiating additional treaties, including with the Netherlands and Turkey. These agreements largely follow the OECD model, depriving the country of significant tax rights. It is not surprising that most of the country's foreign investment comes from well-known tax havens that allow multinational corporations to set up shell companies to take advantage of the agreements and avoid paying taxes in Mozambique.

According to the International Centre for Taxation and Development (ICTD) database[3], of the eight treaties in force in Mozambique, six are classified as very restrictive, namely: Macau, Mauritius, Portugal, South Africa, United Arab Emirates and Italy, in ascending order of restriction. Reduced withholding tax rates (for dividends, interest and royalties), the absence of withholding tax on service charges, unfavourable definitions of "permanent establishment" and tax evasion on capital gains through indirect offshore transfers are some of the main clauses of the agreements that multinational companies use to avoid paying their fair share of taxes.

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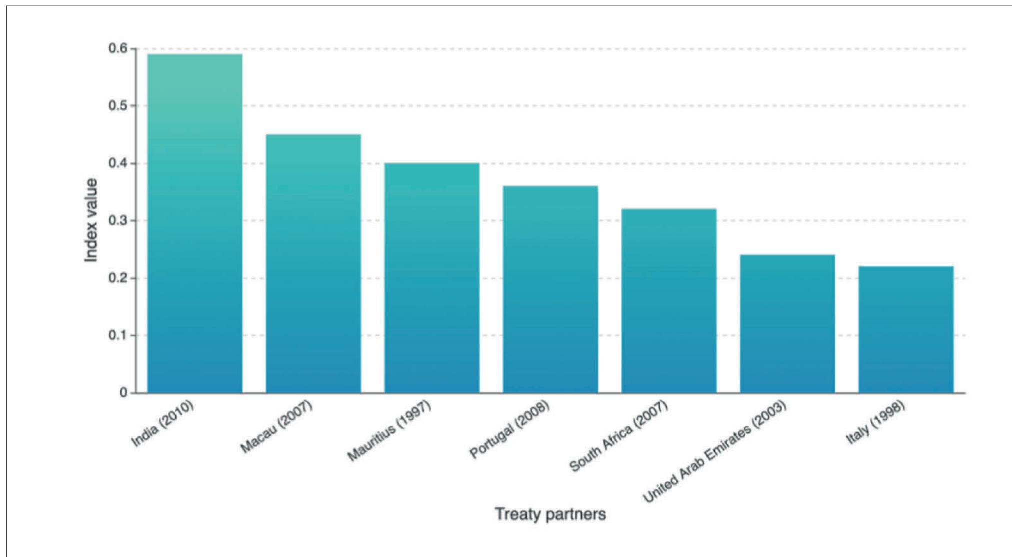
[1] The original purpose of tax treaties was to prevent companies from being taxed twice on commercial activities that took place between the two signatory states, known as double taxation. However, due to the unsuitable models used in their negotiation, which favour the companies' countries of residence, the rich countries, tax treaties mean, for countries like Mozambique, the waiver of tax rights, while at the same time allowing multinational companies to evade taxes.

[2] https://cddmoz.org/wp-content/uploads/2020/07/Acordos-de-Dupla-Tributacao-1-1.pdf

[3] Hearson, Martin (2021). Tax Treaties Explorer [Online database], Brighton: International Center for Tax and Development (ICTD). https://www.treaties.tax

Graphic1.Index of global withholding taxing rights: Treaties signed by Mozambique[4]



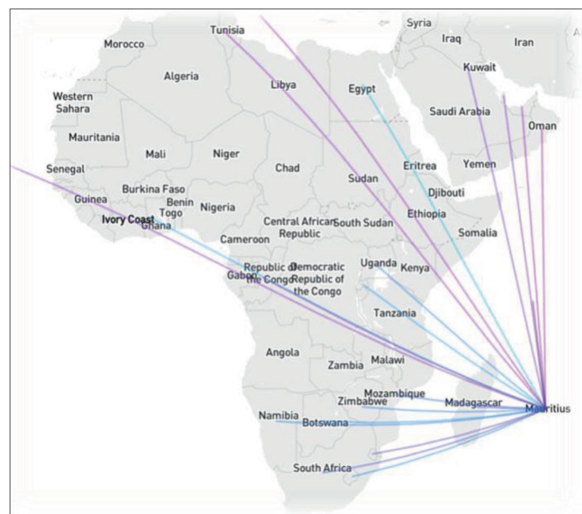
Among Mozambique's restrictive agreements, two stand out due to the level of losses they have entailed for the country: those with the tax havens of Mauritius and the United Arab Emirates (UAE). Overall, it is estimated that, due to its tax treaties with tax havens in Mauritius and the UAE, in 2021, Mozambique lost US$315 million in withholding taxes on interest and dividend payments alone. This represents 7.4% of the country's total tax revenue that year, which could have been spent on basic social expenditures that contribute to improving the living conditions of Mozambicans.

Treaties with Mauritius

Mauritius has at least 20 double taxation agreements signed and in force with different countries across the African continent. The country was ranked as the 15th worst tax haven in the world in the Tax Justice Network's Corporate Tax Haven Index in 2021.[5]

Tax treaties signed between Mauritius and other countries, especially those in Africa, were the focus of the Mauritius Leaks 2019 investigation by the International Consortium of Investigative Journalists.

Figure 1. Mauritius Tax Treaty Network with African Countries



[4] This index allows us to assess how restrictive individual treaties are (the more restrictive the treaty, the worse the treaty would be for source countries in terms of protecting against tax abuse and protecting their taxing rights). The dataset assigns each treaty a score between 0 and 1, where a higher number indicates that the treaty is less restrictive.https://www.treaties.tax/en/

[5] The Corporate Tax Haven Index is a ranking of the jurisdictions most complicit in helping multinational companies avoid paying corporate income tax.https://cthi.taxjustice.net/en/

There are records of at least six countries having renegotiated/terminated their treaties with Mauritius, namely: South Africa, Lesotho, Kenya, Rwanda, Senegal and Zambia. Of these, four (South Africa, Lesotho, Kenya and Rwanda) have new agreements in force with relatively more favourable terms, while the last two, Senegal and Zambia, are currently negotiating a new treaty.

South Africa (renegotiated))[6]	**Lesotho (renegotiated)**[7]	**Kenya (renegotiated)**
South Africa successfully renegotiated its treaty with Mauritius in May 2013. The two countries had started the renegotiation in November 2009 and it was only completed in January 2011. The main motivation for renegotiating the old tax treaty was to reduce abuse of the treaty. The South African Parliament ratified the new treaty on 14 September 2013. Mauritius notified South Africa of its ratification of the new treaty on 28 May 2015.	Lesotho also successfully renegotiated a new tax treaty with Mauritius. The new agreement was signed by the two countries on 2 March 2021 and entered into force on 7 June 2021, replacing the old 1997 treaty. The treaty renegotiation process was initiated by Lesotho, recognising that the old treaty was compromising its interests and because it lacked some of the key elements of a modern tax treaty.	In 2014, the Tax Justice Network Africa (TJNA) took the Kenyan government to court over its tax treaty with Mauritius.[8]In 2019, the agreement, signed in May 2012, was annulled and declared unconstitutional by the Kenyan High Court. As a result, a new agreement was signed, awaiting ratification by Mauritius. Analysis suggests that while the new treaty addresses pertinent issues such as information exchange between the two countries and mutual settlement procedures, it is substantially similar to the old one and provides for reduced withholding tax rates on dividends, interest and royalties.[9]
Rwanda (renegotiated)	**Senegal (terminated)**	**Zambia (terminated)**
Rwanda successfully renegotiated its treaty with Mauritius after terminating it in June 2012.[10]The old agreement, signed in 2001, was terminated after Rwanda expressed concerns that it favoured Mauritius by facilitating treaty shopping and reducing its taxing rights. The new agreement came into force on 4 August 2014 and applied retroactively in Mauritius from 1 July 2013 and in Rwanda from 1 January 2013.	Senegal terminated its treaty with Mauritius in 2020[11], citing reduced withholding tax rates as the reason. According to the country's authorities, the old agreement, signed in 2002, cost $257 million in lost tax revenue over 17 years.[12]Negotiations for a new tax convention between the two countries are ongoing.	Zambia also terminated its treaty with Mauritius in December 2020. The previous agreement, signed in 2011, was terminated on the initiative of the Zambian government, which it considered unfair, as it privileged the exclusive allocation of taxing rights to the country of residence of the investments – Mauritius. The new agreement, currently under negotiation, is expected to increase Zambia's taxing rights and include anti-abuse provisions to prevent the benefits of the agreement from being used solely to avoid taxes.[13]

Treaties with the United Arab Emirates

The United Arab Emirates has 25 double taxation agreements signed and in force with different countries across the African continent. The country was ranked as the 10th worst tax haven in the world in the Tax Justice Network's Corporate Tax Haven Index in 2021.[14]

There is only one record of renegotiation/termination involving the UAE in Africa – the agreement with Egypt. The new treaty came into force on 19 April 2021, two years after its signing in November 2019, replacing the 1994 tax treaty between the two countries.[15]

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[6] https://www.treasury.gov.za/comm_media/press/2015/2015061701%20-%20Media%20Statement%20New%20South%20Africa-Mauritius%20DTA%20FT.pdf
[7] https://newscentral.africa/lesotho-mauritius-seal-tax-treaty/
[8] https://newint.org/features/2023/03/03/tax-justice-network-africas-historic-win-over-double-tax-agreements
[9] https://www.ey.com/en_gl/tax-alerts/kenya-gazettes-double-taxation-avoidance-agreement-with-mauritius
[10] https://allafrica.com/stories/201311140821.html
[11] https://orbitax.com/news/archive.php/Tax-Treaty-between-Mauritius-a-40865
[12] https://www.icij.org/investigations/mauritius-leaks/lesotho-seals-new-treaty-with-mauritius-hoping-to-curb-tax-dodging/
[13] https://bowmanslaw.com/insights/negotiations-of-new-double-taxation-avoidance-agreement-between-mauritius-and-zambia/#:~:text=The%20Governments%20of%20Mauritius%20and,to% 20Mauritius%20in%20June%202020.
[14] The Corporate Tax Haven Index is a ranking of the jurisdictions most complicit in helping multinational companies avoid paying corporate income tax.https://cthi.taxjustice.net/en/
[15] https://orbitax.com/news/archive.php/New-Tax-Treaty-between-Egypt-a-47692

What lessons for Mozambique?

The growing number of cases presented in previous sessions clearly demonstrates that the renegotiation of restrictive agreements with tax havens must be seen as an urgent imperative by Mozambique. The country must move forward decisively with the renegotiations so that, like other countries in the region, it can recover its tax rights, ensuring that its economic interests are not compromised by "treaty shopping" practices.

As discussed, there are more reported terminations and renegotiations with Mauritius than with the UAE. This may be because Mauritius is less economically/politically powerful and is widely labelled as a tax haven, making it easier to challenge diplomatically than the UAE. This implies that Mauritius needs to be more cautious and thoughtful when approaching renegotiation with the UAE, or even terminating the agreement if the UAE proves inflexible.

Furthermore, to prevent Mozambique from entering into other restrictive agreements in the future, the country must urgently move forward with the approval of a well-informed double taxation policy to help guide future negotiations and safeguard its tax base. This policy should address at least three main elements: the content of the treaty, the negotiation process, and the choice of partners.

On the first point, the policy needs to clearly define which aspects of tax treaties are negotiable and which are non-negotiable, with the aim of protecting Mozambique's interests and its tax base. This includes differentiating between provisions that are de facto non-negotiable and those that, despite representing a strong country preference, may be acceptable in specific circumstances.

The second element should establish precise rules on who will participate in tax treaty negotiations and how the process of supervising these negotiations will be. The third point should define the criteria that a country must meet to be considered eligible to negotiate a tax treaty with Mozambique. If a country does not meet all the requirements set out in Mozambique's tax treaty policy, the request for negotiation should be promptly rejected.

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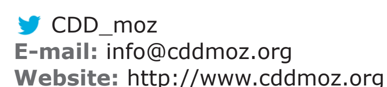
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