TAX INCENTIVES GOVERNANCE FOR TAX JUSTICE

A TOOLKIT FOR AFRICAN MEMBERS OF PARLIAMENT

MARCH, 2024

TAX JUSTICE NETWORK AFRICA

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LIST OF ABBREVIATIONS

ACEPIS	Africa Centre for People, Institutions and Society
APNIFFT	African Parliamentary Network on Illicit Financial Flows and Taxation
ATI	Addis Tax Initiative
BC	Budget Committee
CEP	Council of Economic Policies
CIT	Corporate Income Tax
DRM	Domestic Revenue Mobilization
GDP	Gross Domestic Product
GIZ	German Development Cooperation
GTED	Global Tax Expenditure Database
IFFs	Illicit Financial Flows
IMF	International Monetary Fund
LNG	Liquefied Natural Gas
MDA	Ministries, Departmental and Agencies
MPs	Members of Parliament
MRA	Mauritius Revenue Authority
NDDC	Niger-Delta Development Commission
OECD	Organisation for Economic Co-operation and Development
PAC	Public Accounts Committee
PBC	Parliamentary Budget Committee
PBO	Parliamentary Budget Office
TEs	Tax Expenditures
TJNA	Tax Justice Network Africa
VAT	Value Added Tax

EXECUTIVE SUMMARY

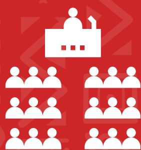
The document is intended to provide more technical support to MPs on tax incentives governance. It breaks down the essence of tax incentives, provides a rationale for tax incentive governance by providing best practices and key legislative interventions that MPs can make in line with improving tax incentives/expenditure governance. This will in turn work to enhance transparency and accountability of tax incentives governance which can help stem revenue leakages and erosion of the tax base that occur due to harmful tax incentives.

For the purposes of this toolkit, **tax incentives are defined as a policy choice to forgo charging tax on certain economic activities in order to promote specific policy objectives.** Tax expenditures are also defined as the amount of revenue forgone as a result of providing special tax treatment to a particular class of individual, type of income, industry, or activity. The focus of this toolkit will be on incentives which aim to encourage economic activity, particularly investment. Examples of such incentives include; tax holidays, investment allowance, tax deferrals, special economic zones among others.

Tax incentives, if well-designed and executed, offer numerous advantages: i) Attraction of capital to preferred locations or sectors, ii) Encouragement of specific investment activities which result in increased capital, technology, and skills transfer, iii) Generate foreign currency, iv) Facilitate employment creation, v) Promote equitable development for marginalized groups and regions. **However, tax incentives can also pose challenges and burdens in governance.** They often result in; i) Revenue costs, ii) Economic distortions, iii) Enforcement and compliance expenses iv) Social costs

Generally, **tax incentives governance involves the design, administering/monitoring, reporting and evaluation of tax incentives**. These roles often fall upon different government institutions such as Ministries of Finance, other sector ministries, revenue authorities and authorities established for preferential tax regimes.

Overall, the legislature holds substantial influence in the approval of public expenditure which involve checking whether public finances are applied effectively and efficiently towards national goals. This includes decisions concerning tax incentives, which encompass exemptions, deductions and other advantages provided through the tax system. The toolkit identified legislative interventions that parliament can carry out during different stages of tax incentive governance.



During setting up and operating tax incentives, parliament can enact/repeal legislation to ensure that all tax incentives have a clear statutory basis, that is power to introduce tax incentives must be derived from a specific law., governance framework and clear policy objectives.

During the reporting stage parliament's mandate is to ensure that the government regularly provides reports detailing issued tax incentives, in a regular, annual and timely manner, allowing MPs to monitor the outcomes of tax incentives/expenditures policy decisions. Further, reporting should be publicly accessible and include all tax incentives issued.

During the evaluation stage parliament can establish committees/bodies or utilise external agencies to conduct independent evaluations of tax incentives. These evaluations should entail assessing the extent to which tax incentives are achieving their intended goals and delivering value for the money spent/revenues foregone.

Parliament plays a significant role in authorising mobilisation and expenditure of public finances **with key influence being in utilising the stages in budget cycle to conduct tax invectives/expenditure governance.** MPs' roles in each of the stages with respect to tax incentive management largely encompass: i) inclusion of tax incentive plans and budgets in the planning and drafting stage; ii) ensuring that tax incentive propositions are included in the budget document or alongside the budget document for debating; iii) oversee the implementation of approved tax incentives; and iv) assess the status of implemented tax incentives – their cost and benefit.

There exist legal and policy frameworks within countries that empower MPs to effectively govern tax incentives. Some of these laws and policies include: constitution, public finance management acts, finance bills/acts, budget policy statements, national budgets, Finance Ministry and Treasury Strategic Plans, statutory instruments/legal notices, and sector-based legislations/agreements.

Key actors to engage in tax incentives governance include Ministries of Finance, Revenue Authorities, Legislature, among others form the core of government support towards MPs for governance of tax incentives. Civil Society Organizations, media, academia, private sector, and members of the public can also play the roles of tax incentive advocacy and exchange of information regarding tax incentives.

Notable challenges in conducting tax incentive governance include: i) information gaps due to inadequate reporting on tax incentives; ii) capacity gaps that include MPs' limited technical abilities to exercise oversight and management of tax incentives; iii) lack of political will from key government actors; iv) lack of involvement of Parliamentarians in planning and strategy setting; v) coordination issues between the executive and legislature; and vi) difficulties in removing issued tax incentives due to aggressive lobbying.

These challenges may be addressed by: i) strengthening laws and policies for reporting and publicizing tax incentives; ii) building the capacities of parliamentarians to build their knowledge and technical capabilities; iii) adopting a collaborative approach with government and non-government institutions to garner support towards governance of tax incentives; iv) utilising formulation stages; v) developing rules that designate clear responsibilities between the executive and legislature while encouraging coordination; and vi) formulation of laws that minimise lobbying for tax incentives among powerful corporations. Parliamentary Budget Committees and Public Accounts Committees to ensure Parliamentarians are involved in all budget

Introduction

Many countries, both developed and developing, provide a range of tax incentives with the aim of, for example, attracting investors and stimulating economic growth.[1] Despite the prevalent utilisation of tax incentives to attract investment, their governance remains weak in most economies. Tax incentives governance involves the design, administering, monitoring and evaluation of tax incentives. These roles often fall upon Ministries of Finance, other sector ministries, revenue authorities and authorities established for preferential tax regimes with very little or no parliamentary involvement in any of the aforementioned processes. In many African countries, tax incentives are provided through disjointed laws which bestow unchecked executive powers that are prone to abuse. They are also provided through private agreements which are not subject for public or parliamentary scrutiny, leading to opaque and unaccountable governance of tax incentive. Parliamentarians, as custodians of public interest and through their legislative and oversight powers, play a key role in enhancing the transparency and accountability of tax incentives governance.[2]

Purpose of the Toolkit

Following calls from Members of Parliament (MPs) through the African Parliamentary Network on Illicit Financial Flows and Taxation (APNIFFT), Tax Justice Network Africa (TJNA), with contributions from the Addis Tax Initiative (ATI) Secretariat and the Council of Economic Policies (CEP) have developed a Tax Incentives toolkit for tax expenditure governance. The document is intended to provide more technical support to MPs on tax incentives governance. It breaks down the essence of tax incentives, provides a rationale for tax incentive governance by providing best practices and key legislative interventions that MPs can make in line with improving tax incentives/expenditure governance. This will in turn work to enhance transparency and accountability of tax incentives governance which can help stem revenue leakages and erosion of the tax base that occur due to harmful tax incentives.

About APNIFFT and TJNA

The African Parliamentary Network on Illicit Financial Flows and Taxation (APNIFFT) is a flagship programme coordinated by Tax Justice Network Africa (TJNA) with an overall objective to provide an opportunity for its members, the African legislators, to strategize, learn from each other and build their capacities in tackling Illicit Financial Flows (IFFs) and tax injustices in the continent.

APNIFFT was first conceptualised in 2015 and eventually launched in 2017 by TJNA. Since its inception, APNIFFT's operational strategy has focused on national-level legislative interventions to combat the continent's IFFs and DRM issues. This has been operationalised through country-based parliamentary caucuses that now serve as a basic unit of engagement and mobilisation of Members of Parliament. These basic units then combine to form regional caucuses, based on membership of regional economic councils, to form the continental caucus.

TJNA operates as the Secretariat of APNIFFT, and a key function of the Secretariat is providing technical support for both national and regional caucuses. TJNA previously launched the 'Curbing Illicit Financial Flows and Tax Injustice in Africa: A toolkit for Members of Parliament' in 2022 and have further been requested to provide technical support on tax incentives governance.

About ACEPIS

The Africa Centre for People, Institutions and Society (ACEPIS) is an Afro-centric think-tank dedicated to bolstering access to credible information to shape public dialogue, inform policy and drive inclusive sustainable development in Africa. It's a Public Policy Research and Analysis work-stream focused on informing global, regional and national policy on development financing and explores the nexus between Taxation, Public Debt and Domestic Resource Mobilisation.

Background to Tax Incentives

For the purposes of this toolkit, tax incentives are defined as a policy choice to forgo charging tax on certain economic activities in order to promote specific policy objectives.[3] Tax expenditures are also defined as the amount of revenue forgone as a result of providing special tax treatment to a particular class of individual, type of income, industry, or activity.[4] The focus of this toolkit will be on incentives which aim to encourage economic activity, particularly investment. The widespread use of tax incentives has been justified by the need to: i) rectify market inefficiencies stemming from externalities associated with specific economic activities, ii) attract and retain new industries and mobile investments, particularly in the context of tax competition, iii) foster agglomeration economies by encouraging the concentration of certain economic activities, thereby generating positive externalities and iv) providing financial support to companies during downturns within their respective sectors.[5] In practice, developed nations often use tax incentives to encourage research and development activities, facilitate export initiatives and bolster the competitiveness of their businesses in the global market. In contrast, developing countries frequently employ tax incentives to attract foreign investments and grow domestic industries.[6]

Tax incentives take different forms and can be classified into two; (i) profit-based incentives which minimise taxes on income and (ii) cost-based incentives which reduce the cost of capital. Profit-based incentives include tax exemptions, tax

holidays, tax deferrals, tax allowance, special economic zones and financing incentives. Cost-based incentives include investment allowances, tax credits and investment tax credits, capital allowances and depreciation rules.[7] The different types of tax incentives are highlighted in Box 1.

Box 1: Typical tax incentives

Tax holidays are temporary exemption windows where new firms are not required to pay corporate income tax for a specified time with the goal of encouraging investment. Tax holidays can take the form of i) being completely exempt from paying taxes on the firm's profits and ii) reduced tax rates.

Exemptions from various taxes are the exemption from certain taxes, often collected at the border such as tariffs, excises and VAT on imported inputs.

Tax allowance and investment allowance is the deduction of a certain fraction of an employee's pay check or of an investment from income tax and taxable profits respectively.

Tax credit and investment tax credit is a special deduction against total payable tax or corporate income tax otherwise payable earned as a fixed percentage of qualifying income tax or investment expenditures.

Tax deferrals are when taxpayers delay paying taxes to some point in the future. Some taxes can be deferred indefinitely while others may be taxed at a lower rate in the future.

Special economic zones are geographically limited areas in which investors enjoy tax privileges not granted in other parts of the country.

Reduced tax rates are the reduction in a tax rate, typically the corporate income tax rate.

Benefits and Costs of Tax Incentives

If properly designed and implemented, tax incentives have various benefits such as attracting flows of capital into preferred locations or sectors of the economy and undertaking specific investment activities.[8] This then translates into increased capital, technological and skills transfer, foreign currency generation, employment creation and equitable development for marginalised groups of people and areas among others.[9] Foreign direct investment may further generate substantial spill-over effects such as increased government tax revenue either directly from taxes paid by an investor, such as taxes paid after the expiration of the tax holiday period, or indirectly through increased tax revenue received from employees, suppliers and consumers.[10] Conversely, tax incentives can be burdensome in terms of overall governance, which can hinder the realisation of their associated benefits. The costs associated with tax incentives include among others: i) Revenue costs, ii) Distortions to the Economy, iii) Enforcement and compliance costs and iv) Social costs. These are discussed in detail hereunder.

Revenue Costs: Tax incentives result in revenue forgone that would have otherwise been collected from activities undertaken, which is commonly referred to as tax expenditures (TEs). Tax expenditures reduce volumes of revenues that governments collect as taxes as a result of providing special treatment (exemptions of tax) to a certain group of taxpayers.[11] By reducing the net revenues, tax expenditures act as direct expenditures and hence increase the overall budget deficit.

Distortions to the Economy: One of the major justifications for tax incentives is that they can attract/create new investments or expand existing ones. However, as governments seek to attract new investors, incentives may discriminate against smaller firms, local businesses and firms in non-targeted sectors. Further, the general outlook is that the broad spectrum of incentives seem to benefit higher-income quintiles (middle and high classes) more than those in lower-income groups especially the very poor. Thus, they end up in a financial disadvantage. Providing excessive incentives to attract new investment may exert more pressure for revenue on smaller existing investors by increasing their tax burdens and can erode the tax base.[12] Additionally, the economy can be distorted through the use of inefficient incentive designs. For instance, different sectors of the economy respond to incentives differently. Export-oriented sectors are sensitive to incentives due to their cost-reducing effects while resource-seeking investors such as extractives and market-seeking investors are not as sensitive to tax incentives because the physical characteristics such as availability of natural resources and market size are key considerations.[13] There is evidence to show that for investments that exploit location-specific rents, i.e. natural resources, additional taxes should be imposed rather than tax incentives. This ensures that location rents benefit the host country in a sustainable way.[14]

Enforcement and Compliance Costs: Tax incentives require governments to incur administrative costs necessary for constant monitoring to prevent fraudulent use of incentives schemes. Excessive use of tax incentives complicates administration, facilitates evasion, and encourages corruption. Incentives also comes with audit requirements, resulting in compliance costs in terms of time and money for businesses. Enforcement costs are considered to consist of three components: 1) the initial grant of the incentive, 2) the costs incurred in monitoring compliance with the qualification requirements and 3) enforcing the recapturing of provisions upon termination or failure of qualification.[15] The more complex the tax incentive regime, the higher the potential enforcement and compliance costs. Tax incentive schemes that have many beneficiaries are also more difficult to enforce than narrowly targeted regimes.[16]

Social Costs of Rent-Seeking Behaviour: The political decision-making processes for tax incentives can either be transparent and objective or discretionary and subjective. Discretionary processes can open opportunities for corruption as policymakers may extend or make incentives more generous in line with their interests. Loose financial scrutiny of tax expenditures can lead to abuse by government officials and legislators, potentially through bribery and corruption.[17]

Tax Incentives Governance

Tax experts generally agree that well-crafted tax incentives can effectively encourage increased investment. However, while tax incentives are often touted as essential for attracting foreign investment, recent studies suggest that they may not be as influential as previously thought. Instead, factors such as robust infrastructure, minimal administrative burdens for businesses, political stability and consistent macroeconomic policies emerge as primary drivers for foreign investors.[18] Considering these findings, it becomes crucial to weigh the costs associated with tax incentives as countries must prioritise the governance of tax incentives to prevent revenue losses and tax base erosion. The OECD and International Budget Partnership have put forward a set of principles that aim to promote prudent governance of tax incentives for investment in developing countries.[19, 20] These include that:

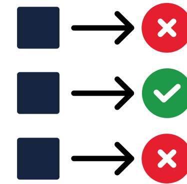
Tax incentives should be provided through tax laws only, or consolidated into the tax code, and approved by Parliaments.

To address inefficiency in having several government agencies administer tax incentives, the administration of tax incentives should be consolidated under one main authority, ideally the Ministry of Finance. There should also be clear coordination with other government agencies.

Laws establishing tax incentives should include a clear statement of their policy objectives and justification based on cost-benefit analyses.

Assessments of the performance of tax incentives in reaching their stated policy objectives should be performed regularly, i.e. over a multi-year cycle.

Assessment of who benefits from the provision, in terms of whether it provides disproportionate benefits to the wealthy or the poor, and whether it makes the tax system as a whole more or less equitable.



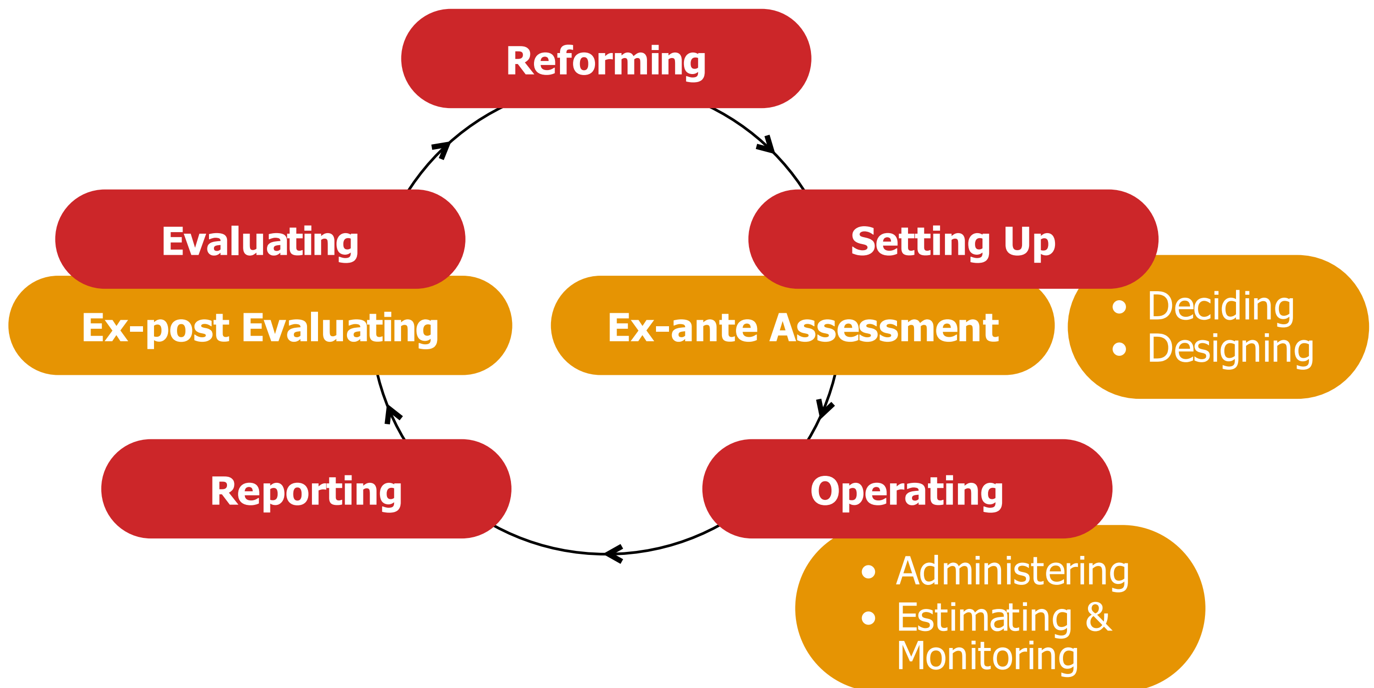
Criteria for granting tax incentives should be clearly defined, discretion should be minimised, and transparency and accountability should be ensured (e.g., through automatic eligibility criteria, using regular audits and evaluations, publishing names of beneficiaries, etc.).

All tax incentives should have a sunset clause or expiry date. This would ensure an adequate review and evaluation process which leads to decisions on their renewal, reform or cancellation.

Discussions on tax expenditures should be linked to annual budget deliberations, accompanied by disclosures that facilitates comparisons with other budgetary information.

Decisions on tax expenditures should be based on broad participation by various stakeholders, including civil society.

Generally, tax incentives governance involves the design, administering/monitoring, reporting and evaluation of tax incentives.[21] These roles often fall upon different government institutions such as Ministries of Finance, other sector ministries, revenue authorities and authorities established for preferential tax regimes. The different stages are illustrated in the form of a tax expenditures policy cycle, showed below, and succinctly explained hereunder.[22]



Setting up of tax incentives: This process entails three key components; ex-ante assessment, deciding and designing tax incentives. Deciding involves identifying the policy objectives that the incentives aim to achieve. A core element in the deciding process is conducting an Ex-ante assessment to analyse the relevance of the proposed measure together with its costs and benefits. Designing entails considering different features that constitute the tax incentive, such as type of tax incentive, eligibility criteria, threshold values, reporting requirements for beneficiaries and the duration of the measure (for instance, whether a sunset clause is applicable or not).

Operating tax incentives: This entails management and monitoring of tax incentives. This requires cooperation and coordination between different government agencies. Revenue authorities play a key role in the administration of tax incentives considering they retain authority to apply tax incentives, as directed by treasury or ministry of finance, during computation of tax obligations for various taxpayers. They are thus custodians of valuable information on taxpayers and tax revenue data that can facilitate estimation of revenues forgone and evaluate tax incentives.

Reporting on tax expenditures: Tax incentives generally result in tax expenditures which is forgone revenue. As such reporting on tax expenditures is considered a best practice aimed at increasing transparency and accountability and allow for parliamentary scrutiny.

Evaluating tax incentives: This entails assessing the effectiveness, efficiency and equity of tax expenditures. This entail Ex-ante (prior to introduction) and Ex-post (after the implementation) analysis. An ex-ante assessment is meant to inform governments on the relevance of a proposed measure and its potential cost implications. An ex-post assessment seeks to interrogate the extent to which incentives achieve stated objectives and whether benefits of a tax incentive exceed its costs. It can further evaluate externalities generated by the tax incentive.

Reforming tax incentives: This stage entails technical and political factors coming into play simultaneously. It involves reforming and justifying how TE policies can contribute to a better alignment of tax systems with public policies and development strategies. Tax incentives can be an important tool for fiscal policy to pursue different policy goals such as creating employment, attracting foreign investment, or greening the economy. However, when ill-designed, they can be ineffective and trigger negative side effects or externalities. Hence, evaluating TEs is necessary (though not sufficient) to identify provisions that do not generate the desired impact, or worse, trigger significant negative socioeconomic externalities against those that are more cost-effective. While it is evident that evaluation is crucial, reforming TE policies requires an understanding of the considerations that lie behind their governance as well as the political economy in the TE area.

Role of the Legislature in Tax Incentives Governance

Overall, parliaments retain the mandate to hold government and decisionmakers accountable in terms of monitoring intended and unintended consequences of laws, strengthening integrity in public service and combatting corruption.[23] The legislature also holds substantial influence in the approval of public expenditure which involve checking whether public finances are applied effectively and efficiently towards national goals.[24] While the specific roles and responsibilities may vary across different jurisdictions, there is a widely shared consensus that parliaments should assume a central role in the decision-making process related to public spending.[25] This includes decisions concerning tax incentives, which are conceptually equivalent to direct spending through the budget and reduce revenue collections.[26] Some of the legislative interventions that parliament can carry out in the various stages of the tax incentives/expenditures governance cycle are outlined below:

Legislative interventions during Setting up and Operating Tax Incentives:

Statutory basis: During this stage, parliament can enact/repeal legislation to ensure that all tax incentives have a clear statutory basis. This means that any authority or body granted the power to introduce tax incentives must derive that authority from a specific law passed by parliament. This practice establishes a legal framework for granting, monitoring and evaluating tax incentives that limits discretion of government officers. In different jurisdictions, there are provisions in various laws that highlight the role of parliament in tax incentives governance, for example, see the cases of Uganda and Zambia described in Box 2.

An Act of Parliament can also extend the authority to grant incentives to other bodies, especially within the Executive. This means that the Parliament would delegate its law-making powers with regard to tax incentives. The resulting legislation is what is termed as subsidiary legislation or statutory instruments. Statutory instruments include regulations, rules, orders, decrees, amongst others. Key parliamentary entry points in tax incentive governance include overseeing subsidiary legislation which can be done by ensuring:

1. That there is placement of safeguarding provisions such as: 'to the extent that the statutory instrument is inconsistent with the parent law, the parent law being the Act of Parliament and the Constitution, the statutory instrument shall not be applicable'
2. By regulating the passage of subsidiary legislation; For instance, before the passing of any subsidiary legislation into law, it should require parliamentary approval. The law governing subsidiary legislation e.g., the Statutory Instruments Act makes provision for the parliamentary approval of statutory instruments before they can be gazetted and have the force of law. A step further will be requiring the submission of an economic impact assessment report before the tax incentives can be gazetted.
3. Lastly, Parliament can ensure that whomever the power to enact secondary legislation is extended to, will regularly report to the Parliament

Box 2: Case Study–Provisions in Country Laws

The Ugandan Constitution provides that taxes shall only be imposed through an Act of Parliament and where an Act of Parliament confers the power to waive taxes to a person or authority then this person is required to report to the Parliament periodically.[27] The Ugandan Public Finance Management Act goes ahead to specify timelines and provides that these reports should include the beneficiaries of the incentives, reasons behind the introduction of the incentives, the amount foregone and the expected benefits from these incentives.

The Constitution of Zambia in article 199 provides that '…where legislation confers power on a person or an authority to waive or vary a prescribed tax the power shall be exercised through a statutory instrument.' It goes further to require that a report that explains the tax waiver or variation should be provided to the National Assembly within 21 days of the publication of the statutory instrument.

A report explaining the waiver or variation of a tax shall be submitted to the National Assembly within twenty-one days of the publication of the statutory instrument.[28]

Clear governance framework: Parliament should also define the roles of different government institutions involved in the management of tax expenditures at the 'decide' stage. The legislation should provide a governance framework outlining the responsibilities of each institution. This helps prevent overlaps, ensures accountability, and fosters coordination among these bodies. Providing for specific and clearly outlined roles and a governance framework, in legislation, ensures that tax incentives are not created or modified without proper parliamentary scrutiny and approval.

Clear policy objectives: Parliament can exercise oversight by requiring that the government authority demonstrates how proposed tax incentives align with national development plans and policies. This ensures that tax incentives are in line with broader economic and social objectives. This may involve creating parliamentary committees or appointing an auditor to regularly review the execution of tax incentives.

Legislative interventions during the Reporting stage:

Reporting on tax incentives is an integral part of the budget proposal and allows for a robust cost benefit analysis. Currently, the Global Tax Expenditures Database (GTED), reports that only 33 countries in Africa report on their tax incentives. The GTED is a resourceful data hub that Members of Parliament should utilise to promote transparency of tax incentives data. Parliament's mandate is to ensure that the government regularly provides these reports, in a regular, annual and timely manner, allowing MPs to monitor the outcomes of tax incentives/expenditures policy decisions. Further, reporting should be publicly accessible and include all tax incentives issued.

MPs should require reporting to provide/present tax expenditure data in a way that enables easy comparison with other budget expenditures and facilitates assessment of the cost-effectiveness of tax incentives. Moreover, government agencies and ministries involved in issuance of tax incentives may be summoned before parliament to present required information. Parliament should specify in relevant legislation the information that government authorities must include in their reports to parliament. The examples below indicate legal provisions for tabling/presenting tax expenditure reports before parliament among some African countries.

Box 3: Legal provisions for tabling TE reports in Parliament

Uganda: In Uganda, Part IX sub-section 77(1) of the Public Finance Management Act, 2015 notes that persons and authorities granted power to make exemptions or vary any tax under an Act of Parliament are required to report the matter to Parliament in each financial year or before the 30th of September, 31st of December, 31st of March, and 30th of June.[29]

Ghana: Under the Monitoring and reporting of exemptions section of the Exemptions Act, 2022 of Ghana, Section 28 (4) requires that the Minister of Finance present the annual budget statement to Parliament alongside an annual report detailing tax exemptions granted, revenues forgone, elaborate justifications and explanations on how the exemptions granted are consistent with the economic management priorities of the government, and any other matter that affects the exemptions regime.[30]

Legislative interventions during the Evaluation stage

In this stage, parliament can establish committees/bodies or utilise external agencies to conduct independent evaluations of tax incentives. These evaluations should entail assessing the extent to which tax incentives are achieving their intended goals and delivering value for the money spent/revenues foregone. The evaluation should also include an assessment of who benefits from the provision, whether it provides disproportionate benefits to the wealthy or the poor, and whether it makes the tax system as a whole more or less equitable. This process can facilitate evidence-based decision-making, ensuring that tax incentives are reformed or terminated if they are not producing the desired outcomes. Parliament can review and scrutinize the results of these assessments to make informed decisions.

Furthermore, the parliament should further incorporate clauses in the legislation that necessitate regular reviews of existing tax incentives. This ensures that the effectiveness and relevance of incentives are periodically assessed and adjusted as needed. This can further facilitate flexibility in amending tax incentives responding to changing economic conditions, policy priorities and emerging challenges.

Parliament should also include clear criteria in the legislation for the repeal of tax incentives. This may involve specifying conditions under which an incentive would be deemed ineffective, redundant, or contrary to national goals. A notable example is when Mauritius and Rwanda conducted evaluations of their different tax incentives and repealed those that were harmful to the economy. In Mauritius the government formed the Mauritius Revenue Authority under the MRA Act of 2004 to promote administration of tax laws and achieve: improved revenue collection, enhance fairness in the tax system, increase transparency and facilitate tax payers' compliance.[31][32] These goals provided the basis for reforms in the tax expenditures framework backed by laws pertinent to tax incentives such as the Customs Tariff Act.[33] In Rwanda, tax expenditure reforms were based on the need to improve revenue collection, auditing procedures, and enhance transparency among large taxpayers in order to increase the country's tax revenue ratio in respect to GDP.[34] This has been augmented by various Ministerial orders such as; Ministerial Order No 009/19/10/TC of 16/07/2019 amending Ministerial Order No 001/17/10/TC of 30/01/2017[35] which indicate requirements for persons and industries to receive tax incentives. Parliament can also facilitate public debate and discussions on tax incentives when proposing amendments or repeals. Such open dialogue may facilitate input from various stakeholders, including experts, civil society organisations, academia, media among others. This ensures a broader perspective and helps in making informed decisions. It also ensures that the voices and concerns of citizens are taken into account.

Below are steps for performing an ex-ante assessment and ex-post evaluation, where legislators can rope in external auditors and evaluators to review tax incentives.

Table 1: Checklist for legislation on ex-ante assessment of tax incentives

Element	Brief Description
Description	Short description of the tax incentive detailing rates, monetary figures, effective date and end date.
Legal reference	This indicates the legal provisions that relate to the tax incentives which cover for their issuance and governance.
Type of tax	This refers to the particular tax base to which the tax incentive is applied. For instance, a tax incentive under Personal income tax, VAT, CIT etc.
Type of tax expenditure measure	This could be exceptions, zero-rating, deductions, tax credits etc.
Clear Policy Objective	Policy objectives should be clearly stated and capable of being measured both quantitatively and qualitatively. For instance, increasing employment is not an adequate description of a policy objective, increasing employment by % and improving median wages by % are better examples. Unclear policy objectives lead to difficulties in determining if tax expenditures are useful in later stages, as it becomes unclear what criteria should be used to measure their effectiveness against.
Targeted beneficiaries	These are the agents or entities who benefits from the tax incentive.
Number of beneficiaries	Provide a figure of the estimate number of beneficiaries receiving the tax incentive.
Implementation and recent developments	Indicate the date of implementation and effective date of the tax expenditure to be introduced. Provide any recent developments with implementation regarding the tax incentive.
Timeframe	This is the duration upon which the tax incentive will be in effect. This encourages regular review and prevents the indefinite continuation of ineffective incentives. It appears as a sunset/expiry clause.
Other relevant government programs	Provide information on other government spending programs relevant to the tax incentive for comparison and justification purposes.
Ministries/Agencies/Institutions involved	Indicate the Ministry, government agencies and institutions involved in the review, approval, administration, and evaluation of the tax incentive.
Eligibility criteria	Describe the criteria used to assess eligibility of beneficiaries for the tax incentive.
Sources consulted to obtain cost calculation data	Indicate the sources of data employed in calculating costs associated with the tax incentive.
Expected costs associated with the tax incentive	Provide the economic and socials costs associated with the tax incentive.

Table 2: Ex-post evaluation of tax expenditures

Ex-post	Develop an evaluation framework that defines criteria for evaluations including, at least, the size (e.g., all tax incentive provisions or the 10 largest ones) and frequency of evaluations (e.g., every 3 or 5 years). The evaluation framework should i) require the evaluation of tax incentive provisions in relation to their adequacy (necessity), efficiency and equity (who benefits), ii) Require testing of any potential externalities the tax incentive may have caused (including, e.g., distributional impact, spill-over effects, impact on the environment, etc). Define processes to implement evaluation results (i.e., how to treat negatively-evaluated tax incentives).

Parliament's involvement in each stage of the tax incentives policy cycle is crucial for ensuring transparency, accountability, and alignment with national development goals. By enacting legislation that establishes a statutory basis, defines roles, and mandates impact assessments, parliament can play a proactive role in shaping tax incentives policies that are in the best interest of their countries. Top of Form

The following are case examples from some African countries that reflect different scenarios of tax incentives governance that MPs can learn from while executing their mandate.

Box 4: Best Practices

United Republic of Tanzania. The Tanzanian parliament passed the **Wealth and Resource Contracts (Review and No.6 and Re-Negotiation of Unconscionable Terms) Act 2017**. The Act established that contracts with the following features are subject to re-negotiation:

a. aim at restricting the right of the State to exercise full permanent sovereignty over its wealth, natural resources and economic activity;
b. are restricting the right of the State to exercise authority over foreign investment within the country and in accordance with the laws of Tanzania;
c. are inequitable and onerous to the state;
d. restricts periodic review of arrangement or agreement which purports to last for life time;
e. securing preferential treatment designed to create a separate legal regime to be applied discriminatorily for the benefit of a particular investor;
f. are restricting the right of the State to regulate activities of transnational corporations within the country and to take measures to ensure that such activities comply with the laws of the land;
g. are depriving the people of Tanzania of the economic benefits derived from subjecting natural wealth and resources to beneficiation in the country;
h. are by nature empowering transnational corporations to intervene in the internal affairs of Tanzania; (i) are subjecting the State to the jurisdiction of foreign laws and fora;
i. expressly or implicitly are undermining the effectiveness of State measures to protect the environment or the use of environment friendly technology;
j. aim at doing any other act the effect of which undermines or is injurious to welfare of the People or economic prosperity of the Nation…'

In support of this Act and mining operations in The United Republic of Tanzania, other laws regarding the sector and specific to tax incentive governance were amended. The country amended the Mining Act R.E 2019 in 2022 to include provisions for governance of tax incentives offered to mining companies. The amended provision stipulated that the government is entitled to acquire up to 50% of the shares in a mining company, equal to the quantifiable value of tax expenditures incurred by the government in favour of the mining company.[36]

Uganda. In May 2022, after public outcry on the cost of power tariffs in Uganda, the parliament commissioned an ad hoc committee to investigate the public private partnership agreement between the Government of Uganda and Bujagali Energy

Limited. Bujagali Energy Limited is a power producing company that provides clean energy in Uganda. There were complaints that the corporate tax waivers provided to Bujagali Energy Limited were increasing the costs of power tariffs for Ugandan citizens. The parliament suspended the extension of the tax waivers pending the report of the ad hoc committee and tasked the committee to provide a report on the costs and benefits of tax incentives provided to the energy company. The report which was released and debated upon in Parliament in 2023 showed the amount of revenue foregone between 2018 and 2021 because of the tax waiver as well as the impact on the cost of tariffs. The parliament adopted the report with recommendations and declined to further extend the tax waiver for Bujagali Energy Limited. This has, however, not been affected.

Stages in Budget Cycle to Conduct Tax Incentives Governance

Parliament plays a significant role in authorising mobilisation and expenditure of public finances.[37] Comprehending the key stages in the budget cycle enables parliamentarians to know when and how to engage in the process for better tax incentive governance. In this regard, MPs must advocate for and seek opportunities to ensure their inclusion and strengthen their participation in tax incentives governance along the key stages of the budget cycle at both ex-ante and ex post evaluation stages.[38] The following are key stages in the budget cycle that parliamentarians should engage in.

Planning and Drafting Stage: At this stage, the relevant country Ministry of Finance (or equivalent agency) issues spending guidelines while receiving various expenditure budget proposals from government departments based on strategic plans and frameworks provided in budget guidelines.[39] The legislature can impact tax expenditure policy decisions at the planning and drafting stage of the budget as they can approve or initiate amendments to the budget through the Parliamentary Budget Committees/Offices (PBC/PBO) in respective countries. This can be achieved through the following specific roles relevant to tax incentives: i) ensure that the tax guidelines issued require the various departments and agencies that indicate tax incentive plans and budgets elaborately, ii) ensure that tax incentive plans and budgets presented by departments/agencies align with legal and policy frameworks regarding tax incentives – provisions in the Finance Bills/Acts and Tax Policies, and iii) ensure that the PBC/PBO documents detail engagement at the planning and drafting stage and make these available to the public.[40] In Kenya, Section 35(1) of the Public Finance Management Act, 2012 details the main stages of the national government budget process. The first three stages are as follows: i) integrated development planning process inclusive of long-term and medium-term planning; ii) planning and determining financial and economic policies and priorities at national level over the medium terms; and iii) preparing overall estimates through budget policy statement of national government revenues and expenditure.[41] Nigeria's planning and drafting stage of the budget process is slightly different. The Fiscal Responsibility Act, 2007 requires that planning and drafting of the budget base on the approved Medium-Term Expenditure Framework or the Fiscal Strategy Paper.[42] Section 21(1) of the Fiscal Responsibility Act, 2017 further indicates that government corporations and other related agencies should provide scheduled estimates of revenues and expenditure.[43] Examples of the two countries provided indicate that these stages largely encompass planning and drafting. Consequently, they warrant parliamentarians' involvement in the budget process for management of tax incentives.

Legislative Stage: This stage entails tabling the drafted budget before parliament for debates and approval. Parliamentarians review and debate the draft budget to ensure it aligns with national developmental goals.[44] At this stage, the specific roles MPs can play include ensuring that tax incentives issued are adequately reported and presented in the budget document.[45] This is on the cognition that most African countries do not report tax incentives in their budget which worsens tax expenditure reporting issues.[46] For instance, in Kenya, the National Treasury presents the budget and tax expenditure reports separately[47]. In South Africa, the 2024/2025 budget overview document highlighted some tax expenditures in the form of incentives under the tax proposals sections.[48] Parliamentarians through the oversight function have the opportunity to review and debate such aspects in the budget as empowered by the Money Bills Amendment Procedure and Related Matters Act (Act 9 of 2009).[49] MPs may also push for amendment of the draft budget report to include elaborate reflections on tax incentives based on what is debated in parliament. Further, MPs may also at this stage challenge various regressive laws and policies related to tax incentives to ensure their application contributes to national developmental goals and equitable distribution of benefits to all. Lastly, MPs can also work at this stage to ensure sufficient public participation and, in return, provide feedback on how the public input was utilised.

Implementation Stage: Once the budget has been approved, relevant Finance Ministries disburse funding to departments/agencies to implement approved activities. At this stage, Finance Ministries are in charge of monitoring spending of allocated funding to various agencies/departments.[50] Parliamentarians can leverage on constitutional authority to monitor the implementation process to ensure proper spending in accordance with elements of approved budgets. At this stage, parliamentarians can do the following: i) initiate investigation and flag cases of fraud and unjustified over and under spending and management of tax incentives, ii) request accurate information on tax incentives and resulting tax expenditures from Finance Ministries, and agencies/departments that have had tax incentives with risk and benefit factors (the information may

be in the form of detailed reports presented in parliament)[51], iii) amend and formulate laws and policies that mitigate loopholes for abuse of tax incentives, and iv) approve or reject budgetary changes (as in supplementary budgets). An example of a good practice in scrutiny of tax incentives by members of parliament is elaborated in Tanzania. Parliamentarians approved 2023/24 budget which listed reduction in tax incentives to 1% of the GDP as one of the crucial strategies for increasing revenues in the country.[52] Additionally, in his budget speech while presenting the Budget Statement and Economic Policy, the Minister for Finance in Ghana noted that members of parliament have approved issuance of special incentives to One District One Factory (1D1F)[53] companies based. The implementation of these incentives has based on their contribution to economic growth and industrial development.[54] This indicates the entry point for parliamentarians in the budget implementation stage to ensure that only beneficial tax incentives listed in the budget are implemented.

Auditing Stage: According to the International Budget Partnership's Open Budget Survey 2021[55] , only a few countries (19) had the legislature involved in audit stage of the budget while most countries (101) did not provide opportunities for legislature to be involved in the audit stage of the budget. Parliamentary Budget Offices/Committees, with their expertise and capacity, may collaboratively work with parliamentarians in the audit stage of the budget[56] regarding the governance of tax incentives/ expenditure. They can play the following accountability and oversight roles: i) conduct thorough analysis, review, and monitor government agencies/departments spending, plans, policies, and overall performance, ii) contribute to design and approval of reporting/assessment templates for specific forms of tax incentives, and iii) request regular and timely monitoring and evaluation reports on tax incentives from relevant Ministries, Departments and Agencies. In Ethiopia the Federal Parliamentary Assembly has demonstrated involvement of its parliamentarians in audit processes of the budget. This has occurred through established public hearing to the approval of the annual budget and review of the audit report.[57] Such opportunities and mechanism for involvement of the legislature may be utilised to strengthen oversight, transparency, and accountability of tax incentives approved or proposed in the budget.[58]

Laws and Policies to Consult for Tax Incentives Governance

Laws and policies provide legitimacy and justification for parliamentary involvement in tax incentive governance. They lay the foundation for various tax incentive/expenditure policy decisions taken by government.[59] Parliamentarians can make reference to the following framework of laws and policies (among others) when executing their roles in tax incentives governance.

Constitution: Respective country constitutions outline government legitimacy in its activities and citizens' rights. Regarding tax incentives governance, most constitutions provide that taxes can only be imposed, waived or varied through an Act of Parliament. Constitutions also detail persons or authorities with powers to waive or vary a tax imposed by law and require them to report to Parliament periodically on the exercise of those powers.

Public Finance Management Acts: Many African countries have Public Finance Management Acts that guide the management of public finances. They outline institutional responsibilities – Finance Ministries, Treasury, Legislature and others with regard to identification, designation, administration and review of tax incentives. These Acts often provide the legal framework for reporting on incentives, outlining the entities tasked with writing the reports (often the National Treasury/ Ministry of Finance), the timelines for reporting and the information they should contain.

Finance Acts/Bills: Finance Bills present propositions to changes in taxes and more importantly provide proposals for new tax incentives. This is an important stage of setting up tax incentives. At this stage, it is necessary that MPs review and debate the elements of such proposals. It is prudent for parliament to require that ex–ante assessments are provided at this stage. Additionally, parliament must hold to task the proposers of such tax incentives on the policy objectives, intended beneficiaries, and qualifying activities of the proposed tax incentives. Parliamentarians at this stage have a chance to pass incentives into law, reject or amend accordingly in reference to constitutional, legal, policy and socio-economic justifications.

Budget Policy Statements: Budget policy statements outline various areas of strategic focus and policy goals to provide guidance to national government, agencies and departments in preparation of their budgets for subsequent financial years in the medium term. Legislature may interact with the budget policy statements prior to tabling of the budget document and exercise its oversight and accountability role. As such, parliamentarians may review the statements to check for guidelines and policy proposals related to tax incentives/expenditures and propose relevant changes accordingly.

Finance Ministry and Treasury Strategic Plans: Strategic plans provide objectives to be realised by relevant Finance Ministries, Treasury, and agencies/departments. Such strategic plans outline tax practices aimed at creating macroeconomic growth/stability. Parliamentarians may review the strategic plans and focus on policy areas related to tax incentives.

National Budget: Parliamentarians may make reference to national budget documents for purposes of monitoring and evaluating expenditures and assess if all the constituents of the budget document have been followed by Ministries Departments, and Agencies (MDAs). Having included a tax expenditure section in the budget document, parliamentarians may use budget documents to track revenue losses as a result of tax expenditures and utilise budget data to inform analysis and review of tax expenditures.

Statutory instruments/legal notices: Statutory instruments in tax incentives governance provide a mechanism for the detailed implementation of tax-related policies without the need for frequent changes to the primary tax legislation. They are the main channel through which tax incentives are granted as they offer flexibility and allow governments to respond to economic conditions and policy goals. In most instances, however, there is limited parliamentary oversight and transparency which limits prudent tax incentives governance.

Sector based legislation/ agreements: Tax incentives in many African countries are often pegged on sector-based legislation or agreements and in many instances, both. This includes resource legislation such as mining and extraction legislation which aim to foster exploitation of natural resources, investor promotion legislation including export processing zones and special economic zones, among other examples. This implies that once an investor gets a certain mining concession, such as a mining lease, they are automatically entitled to various tax exemptions. In the mining sector, tax incentives often take the form of, for example, corporate income tax holidays, reduced corporate income tax rates, reduced royalty rates. There is often provision for further additional tax incentives other than what has been provided in the mining legislation. This coupled with negotiation of these incentives often happens on a project-by-project basis promotes inconsistency in tax incentives administration and inefficiency.

Case Study: Tax incentives tied to mining leases in Zimbabwe.

In Zimbabwe, certain tax exemptions are pegged on the **special mining lease** in accordance with section 36 of the Income Tax Act. It should be noted that the special mining lease according to section 163 of the Mines and Minerals Act is issued upon the approval of the President conferring with the Ministry of Mines and the Mines Affairs Board recommendations. These tax exemptions pegged to the special mining lease are only granted when the Minister for Finance and the Minister of Mines confer with one another, and the Minister of Finance is satisfied that the exemptions are in the best interest of Zimbabwe. The Minister of Finance then issues a **statutory instrument** for the tax exemptions to take effect. The framework as it stands, provides opportunity for **little to no parliamentary involvement**.

Resource/ investment contracts/ agreements: Another scenario that should be of serious consideration to Parliament is the use of stabilization clauses in investment contracts, resource extraction contracts and sometimes, other legislations. A tax stabilization clause is a 'mechanism which is used to deal with the risk of changing tax laws that may have an adverse effect on the financial viability of a project.' The effect of a stabilization clause such as this can be freezing the tax laws as of the date of the agreements, meaning any tax benefits they received at the time of the agreements shall not be subject to change. Other stabilization clauses offer a balancing approach whereby the laws will change and the investor shall be compensated for the cost of compliance with the new laws/ amendments. In effect, stabilization clauses limit the powers of the Parliament in changing laws in respect to a particular entity. This problem is further worsened when governments enter into several such arrangements. In effect, this can limit the ability of government to change its overarching fiscal regime for a decade or more.

Case study: Stability clause in Nigeria's extractive sector.

In Nigeria, the Liquefied Natural Gas (LNG) (Fiscal Incentives, Guarantees and Assurances) Act 1990 sought to give pioneer status to Nigeria LNG limited and in accordance with section 2, grant the company tax relief for a period of 10 years from the date of production. The Nigeria LNG is a private company which is co-owned by the Nigerian government and private entities including Shell, Total and Eni. The case of Nigeria LNG is unique in that, legislation was enacted to protect a particular company and guarantee certain tax incentives including the use of a stabilization clause. Since then, this Act has been the subject of legal and political disputes, with attempts to amend it in 2016. The biggest barrier to attempts to amend it was a provision within the Act requiring that prior negotiations between the government and shareholders must take place before the amendment of the Act. This was done to protect shareholders from unilateral actions of the government.

One such attempt was the introduction of a statutory provision that Nigeria LNG pay 3% of their total annual budget to the Niger-Delta Development Commission (NDDC) in accordance with the NDDC Act. However, upon seeking the Court's opinion on whether this provision could be enforced against them, the Court ruled in Nigeria LNG's favour. The next attempt was to directly amend the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) to introduce the same provision. However, the attempts by the House of Representatives were not successful.

Key Actors to Engage in Tax Incentives Governance

Beyond policy and legal frameworks for managing tax incentives and resulting tax expenditures, there are several actors who contribute to decisions around tax incentives and their overall management, and who can inform and support MPs.[60] Each of the actors play different roles, retain mandates and have interests that can support tax incentives governance as explained hereunder.

Ministries of Finance: They are the custodians of public funds, responsible for formulating the government's overarching tax policy and supervising its implementation. As such, they retain mandates and have a predominant role in decisions around tax incentives and in the overall management of these. They often engage in vetting tax incentive proposals, offering technical assessments and estimating the cost of tax incentives.

Revenue Authorities: These are separate and autonomous entities from the Ministries of Finance that assume a critical role in administration of the implementation of tax incentives. They play an important role in tax expenditure reporting that includes generating, collecting and documenting data/information on tax incentives. They can provide useful information on beneficiaries, value of incentives offered, and sectors that parliamentarians can leverage for analysis of adequacy, efficiency, and equity of incentives among other considerations. However, their involvement in shaping tax incentive proposals is usually limited to providing technical inputs and assessments, given their primary focus on tax administration and implementation. As a result, their role does not encompass policy coordination or broader evaluations of the impacts of tax expenditures beyond immediate revenue implications.

Other Institutions of Government: Ministries, Departments and Agencies including those responsible for economic development, trade, and specific sectors such as tourism, mining, and energy, often wield significant influence in the realm of tax incentive policies. This is especially evident in incentives aimed at fostering investment and overall economic growth. These ministries view tax incentives as vital instruments for promoting growth and attracting investment to their respective sectors. However, these actors may not prioritise the potential negative impacts on revenue collection or the repercussions for service provision in other sectors. This can introduce significant contradictions in overall tax policy. In cases where tax incentives are legislated to support the development of specific sectors; certain provisions may conflict with other laws promoting tax responsibility or requiring minimum spending levels in social sectors. While individual sector policies may appear sound, collectively they can undermine the government's commitment to responsible public finance management. In some instances, sector-specific legislation establishes specialised councils or other bodies that include sector ministries and private sector stakeholders, granting them substantial responsibilities for managing tax incentives, such as certifying potential beneficiaries.[61] This arrangement can lead to conflicts of interest and blur the line between government and private actors and interests, further eroding the government's capacity to effectively oversee tax incentives.

For these reasons, it is essential to ensure that the roles of the sector authority/ ministry, the Ministry of Finance and the tax administration are clearly defined within both the sector legislation and tax legislation.

Additionally, it is important to ensure that sector and tax legislation are in harmony to avoid conflicts of interest. For instance, a mining legislation providing VAT tax exemptions on equipment should be in harmony with the main tax law e.g., the VAT Act, which makes provision for a similar incentive. The administrative procedures within both pieces of legislation should be clear and aligned.

Case study exemplifying a lack of coordination

A product sharing contract between Dominion Petroleum Kenya Limited and the Government of Kenya provided that certain goods and services would be exempt from VAT. Section 23 of the VAT Act of Kenya enabled the Minister of Finance to provide this exemption, if it was in the public interest to do so and as long as the entity in question has an oil exploration license in accordance with a product sharing contract entered into force by government and the Petroleum (Exploration and Production) Act.

The lack of clarity in the administration of this particular tax incentive led in part to a tax dispute. The Kenya Revenue Authority demanded for VAT on certain imported services. The taxpayer in question argued that the Ministry of Finance/National Treasury had written to the revenue authority in which they had confirmed that the taxpayer is eligible for the tax exemption under section 23 of the VAT Act. However, the Ministry of Finance noted that the Ministry of Energy would confer with the revenue authority to confirm that certain imported services would be eligible for the same exemption. The Ministry of Energy did not do so. Thus, the revenue authority argued that this failure to complete administrative procedures invalidated the tax exemptions enjoyed by Dominion.

The High Court of Kenya did not agree with the revenue authority and upheld that non-performance of administrative procedures by the various government agencies should not invalidate the tax incentives to be enjoyed by the taxpayer. The lack of clear administrative procedures led to a situation that costed both the government and the taxpayer.

Civil Society Organisations (CSOs), Academia and Media: These stakeholders can play a crucial role in supporting MPs in tax incentive governance. They contribute by advocating for transparency, conducting research, and providing in-depth analysis on the impact of tax incentives. CSOs, particularly can engage in capacity building, offering trainings to enhance MPs' understanding of the complexities of tax incentives/expenditures in tax policy. CSOs, media and academia can actively monitor and evaluate the implementation of incentives, ensuring outcomes align with intended objectives. Further, they can facilitate public engagement by organising policy debates to provide information and advocate for consideration of various interests' groups. Overall, CSOs, Academia and Media can enhance the decision-making process, promoting accountability, transparency, and effective tax incentive policies for the benefit of the public and the nation's development.

Private sector: These stakeholders wield considerable influence in advocating and lobbying for tax incentives tailored to their respective sectors and business. They actively seek to shape decisions made by both the executive and the legislature and can play a crucial role in supporting MPs in the governance of tax incentives. Private entities can contribute their industry expertise, providing valuable insights and feedback during the tax incentives/expenditures policy-making processes. Their involvement can foster transparency, compliance and capacity building, and could enhance MPs' ability to make informed decisions about tax incentive policies. Overall, collaboration between private sector and MPs can ensure that tax incentives are well-managed, aligned with economic goals and contribute to sustainable development. Nonetheless concerns have emerged of inequity in issuance of tax incentives as only few firms benefit. This has been exacerbated by lobbying supported by politicians thus leading to continued implementation of from wasteful tax incentives.[62] Tax incentives issued with little regard to social benefit due to private sector lobbying promote rent seeking thus indicating lack of a credible technical justification for their issuance.[63] Therefore, there is room to do more to ensure better issuance of tax incentives albeit calls for private and public sector collaboration.

Citizens: Encompassing the broader public and especially constituents who empowered MPs through their votes, MPs should actively engage citizens who are impacted by tax incentives. MPs act as intermediaries, disseminating crucial information on public policies, including tax incentives, to their constituents. Furthermore, MPs can foster citizen participation by facilitating the exchange of information between them and the general public through established public participation frameworks.[64] They may strengthen access to information through reports/documents and mass education of the public regarding tax incentives, including their issuance, legal frameworks, benefits and costs.[65] In return members of the public, can then rely on acquired knowledge and information to hold governments to account on adopting fairer tax systems.[66]

Challenges in Conducting Tax Incentives Governance

Tax incentives governance can be an arduous endeavour, demands a wide range of information, technical capacity and effective interagency relationships that may not always be readily available or clearly established. MPs must therefore anticipate challenges and strategize how to address them in order to be effective in tax incentives/expenditures governance. Some of these challenges are succinctly described below.

Information Gaps: Information sources on tax incentive governance provide best practices, national and global trends regarding tax expenditures and provide relevant background knowledge to parliamentarians that is necessary for their effective participation in tax incentive governance. However, there is limited reporting and information on the subject of tax incentives. In particular, information describing best practices and related issues and challenges.[67] Roughly 50% of countries are concentrated within the lowest Global Tax Expenditures Transparency Index (GTETI) scores on tax expenditure reporting within parliaments' policy making.[68] This perpetuates lack of transparency in scrutiny of tax expenditure policies for parliamentarians[69] Tax expenditure reports and other documents that provide adequate information are essential to parliamentarians to exercise oversight and hold agencies and ministries to account.

The most prominent information challenge that MPs are bound to encounter is the lack of centralised and easily accessible data (on tax expenditures – recipients of incentives, sectors benefitted, costs of incentives, among other variables). Such data is normally found in various government departments and institutions, such as revenue authorities, treasury and finance ministries, and national statistical bureaus, that do not necessarily work in harmony. This has been attributed to substantive resource demands, in terms of time and funding and technical capacities needed by national authorities to systematically identify, estimate, and report on tax incentives.[70]

Also, revenue authorities and treasuries may be unwilling to provide data on tax expenditures. For instance, scholars have pointed out that despite ministries and revenue authorities in African countries' receive support from global agencies, such as IMF, OECD, GIZ, and World Bank, to conduct studies and obtain data and information on tax expenditures, none of the reports bearing the information have been made accessible to the public.[71] These practices do not promote transparency of public funds and decrease the possibility of public scrutiny of policymaking in general, and the use of tax expenditures in particular.

Key Parliamentary Entry Point: To address data gaps contributed by government agencies, MPs can also make legislation to require regular publication of tax expenditure data and/or presentation of such to relevant committees of the parliament for scrutiny. Noteworthy examples of some countries in Africa indicate established laws that necessitate reporting and publicizing of tax expenditures. For instance, in Kenya, Section 77 of the Public Finance Management Act, 2012 forms the legal basis for reporting tax expenditures.[72] Section 82 (4) of the Public Finance Management Act, 2012 mandates the submission of a report containing information on all tax waivers and variations along with the rationale for their issuance to the Auditor-General. The section also stipulates that the report should be published.[73] In Botswana, reporting on tax foregone is done in accordance to Section 31 (Subsection 3 and 4) of the CAP 53-03 Botswana Unified Revenue Service Act. Both sections of this law require that the Commissioner General submits quarterly and half year reports to the Board of Revenue Service detailing the amount of revenue foregone.[74] Additionally, Ghana utilises the Public Financial Management Act, 2016 to strengthen reporting on tax expenditures.[75] Section 21(5) of the Public Financial Management Act, 2016 requires the Minister of Finance in Ghana to report on tax expenditures, their existing costs and any new tax expenditures.[76] Legislation may also require capacity building of relevant MDAs on harvesting and organising adequate tax expenditure data.[77],[78] Parliamentarians may also advocate for more collaboration between relevant institutions of governments and non-state actors like CSOs, academics, media and experts to expand research, review and reporting/documentation of tax incentives/expenditures.[79]

Additionally, to increase transparency and accountability of tax incentives provided through sector-based agreements/ legislation, parliamentarians can demand the complete/ partial disclosure of contracts including fiscal terms such as tax incentives, develop access to information legislation and require parliamentary approval as a prerequisite of such contracts/ agreements before they are enforced (either through ratification or gazettement of a statutory instrument).

Capacity Gaps: Capacity gaps include limitations in technical abilities that parliamentarians need to exercise oversight and accountability in tax incentives/expenditures governance.[80] Across many jurisdictions in the world, MPs are expected to represent citizens, enact legislations and policies as well as to hold government into account in the interest of citizens.[81] However, parliamentarians in many African countries have limited formal training to develop technical capacity for public finance policymaking and the oversight roles.[82] As such, parliamentarians will normally be constrained in terms of technical knowledge of tax incentives which may hamstring their governance role. Therefore, there is room to do more to provide technical support to MPs.

Key Parliamentary Entry Point: This can be remedied by trainings for parliamentarians to improve their capacity in fundamentals of public finance and particularly on the application of tax incentives as macro-economic instrument. MPs can take advantage of capacity building work by CSOs engaged in tax work. They can also utilise research offices and technical support officer provided by Parliament to build their knowledge and ability to engage and provide effective oversight on tax expenditures.

Lack of Political Will: This implies unwillingness of political actors to commit time, resources, and interest in creating and achieving change for the interest of the country.[83] Lack of political will is demonstrated by a governance and leadership system that fails to adhere to constitutional provisions and other legislative frameworks regarding management and use of public finances.[84] Lack of political will is likely to constrain effectiveness of parliamentarians' role in tax incentives governance.

Key Parliamentary Entry Point: MPs can lobby within parliamentary caucuses for party support for legislation towards governance of tax incentives. Legislators may identify and work with civil society and other relevant actors collaboratively to advocate for legal and policy reforms to enhance commitment of governments towards accountability and inclusive multi-stakeholder approach to tax incentives/expenditures policy making.[85] This will ensure that those put in charge not only follow legal and policy frameworks in place, but also manage tax expenditures in accordance with national interests.

Lack of involvement of Parliamentarians in planning and strategy setting: The involvement of parliamentarians in the earlier stages of planning and design of national tax goals and strategies is crucial as they contribute their input through reviews, debates, and dialogues with executive. However, there is notable limited involvement of parliamentarians in the early stages of tax planning among some African countries.[86] For instance, in Zambia the Green Paper, a consultative macroeconomic and tax framework and document is not sent to parliament for review, and subsequently inhibits policies credibility.[87] As such, parliamentarians miss out on opportunities to contribute their input towards shaping strategic approaches to management of tax incentives as well as exercising their role of keeping government in check. Furthermore, as parliamentarians represents the will of the people, these interests are not taken into consideration through approaches excluding inputs by parliamentarians.

In Ghana, parliamentarians are not involved in the initial planning and preparation stages of the budget done by The Ministry of Finance and Economic Planning. Other stakeholders such as CSOs, lobby groups and invited stakeholders to present contributions to be included in the budget. The legislature is involved at a later stage taking place during the approval of the proposed policies, when the tabled budget is debated.[88]

Key Parliamentary Entry Point: To mitigate this, MPs can utilise budget committees or task forces comprised of members of parliament with expertise in economics and finance. These committees provide an opportunity for more in-depth and specialised scrutiny that can sustain an informed accountability dialogue with government ministries and agencies. For instance, South Africa has elaborate mechanisms allowing the legislature to exercise accountability and oversight of the budget and tax expenditures through the Budget Committee (BC) and the Public Accounts Committee (PAC). The BC and PAC analyse and assess the impact of proposals within the budget and expenditure plans during the draft stage. Also, the Money Bills Amendment Procedure and Related Matters Act 2009, occurring prior to tabling and passing the budget, allows the PAC and BC to define processes and procedures that will be undertaken in the approval of the budget.[89] This allowed MPs to thoroughly scrutinize and interrogate national budget elements and economic policies of various government institutions.[90]

Coordination challenges between executive and legislature: Coordination between the parliament and institutions directly and indirectly involved in tax incentives policymaking can facilitate a pooling of expertise, enhanced intersection of goals, better use of resources and elimination of political interference. These together are ingredients necessary for promoting management and governance of tax incentives/expenditures.[91] However, this is normally not the case.

Several factors contribute to inadequate coordination between parliament and the relevant MDAs. They include capacity constraints, the absence of a clear legal mandate for robust coordination, weak coordination mechanisms and the influence of other actors, such as sector-specific ministries. Coordination challenges between the executive and legislature hinder effective scrutiny of budgetary elements related to tax incentives, especially when tax expenditure reports are not included in the budget document.

In the case of Nigeria, it was noted that despite the constitution allotting appropriation powers to the legislature in section 80 (2, 3, and 4), the budget appropriation stage has been the most contentious elaborated by the 'budget padding' scandal in 2016. It contradicted the constitutional provisions of the section, giving appropriation powers to legislature. This signified a major coordination challenge between the executive and legislature in the budget process. [92] South Africa presents an example of strong coordination and good relationships between the legislature and executive. This is attributed to how the legislature and executive are inherently intertwined and backed up by constitutional provisions. The good relationship has contributed to a balance of power between the two arms of government and promoted better conduct of their respective mandates with regards to oversight and accountability of tax policies in the country.[93]

Key Parliamentary Entry Point: To address coordination challenges, MPs may work towards developing rules and designate clear responsibilities to both arms of the government during the budget process and governance of tax expenditures, thus creating a common ground for legislature and the executive to address oversight and accountability issues, and strengthen coordination and information sharing between the executive and legislature to promote smooth and timely formulation and implementation of tax policies and laws.[94]

Difficulties in revoking/removing issued tax incentives: Once tax incentives have been issued, they pose significant challenges to laws and policies aiming to revoke or remove them in instances where they are deemed harmful. This has been blamed for aggressive lobbying by powerful companies with financial and political influence.[95] For example, in Mauritius, lobbyists funded by some public officials constantly challenged and influenced laws and policies for issuance of tax incentives under the Special Economic Zones and Export Processing Zones particularly when these laws and policies did not provide more tax incentives.[96] Therefore, concerted efforts by powerful corporations and elites ensure issued tax incentives remain in place. Subsequently, this creates a scenario where tax incentives serve interests of only a few while ignoring interests of other groups with less political influence.

Key Parliamentary Entry Point: Members of parliament can utilise their legislative mandate to formulate and pass laws and policies that minimize lobbying by powerful corporations. As a result, MPs can effectively support the removal of harmful and less beneficial tax incentives through suitable laws and policies. Furthermore, parliamentary decisions regarding tax incentive should involve high-standard public consultations. The consultations will be useful in promoting equal influence on tax incentive administration and align with intended economic and social goals of countries.[97]

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