Civil Society Warns Against Bilateral Treaties with Tax Haven Jurisdictions

*Public submissions to government on Barbados and Singapore agreements seek to uphold constitutional provision*

**Nairobi, 19 August 2020** – Tax Justice Network Africa (TJNA) and the East African Tax and Governance Network (EATGN) hereby caution the Government of Kenya (GOK) in its pursuit of new double taxation agreements (DTAs) with the Government of Barbados and Government of the Republic of Singapore.

Singapore is globally ranked as the 8th most aggressive tax haven allowing for extensive avoidance and evasion of taxes from other jurisdictions around the world. Therefore, having DTAs with both countries doubly places Kenya at risk of eroded tax revenues in a time of increased debt strain.

In response to a notice issued by the Ministry of Finance, National Treasury and Planning, on 13 July 2020 requesting for public submissions on the respective treaties, TJNA and EATGN welcomed the change in policy behaviour and submitted comments for the two DTAs on 17 August 2020.

This represents a fundamental shift on the inclusion of stakeholders in treaty making and ratification processes in Kenya. However, we urge that this process moves beyond invitations for comments to more constructive consultations, analysis and decision making that involves other participants including the Kenyan parliament.

Having previously petitioned the High Court -and won- against the National Treasury on the issue of public participation as related to the DTA with Mauritius, TJNA recognises this significant step taken by government to begin opening up the process of policy making as enshrined in the Kenya Constitution.

The Executive Director Mr Alvin Mosioma had previously stated “TJNA intends to ensure that in future similar tax negotiations are not in contravention with the laid down laws and procedures”.

Nevertheless, considering the increasing significance of tax havens in the loss of domestic revenue, the Kenyan Ministry of Finance should note the following four points during this process.

First, there’s a need to publicly explain why there’s an urgency to sign DTAs with known tax haven jurisdictions such as Mauritius or Singapore instead of prioritising the implementation...
of one that has already been developed by the East African Community (EAC) members, who are Kenya’s largest trading partners.

Secondly, that further to submission of comments, the Barbados and Singapore tax treaties will require parliamentary scrutiny and public debate under the Treaty Making and Ratification Act of 2012 (TMRA 2012).

This is in line with the fulfilment of the monist principle in the Constitution; requiring approval by the legislature on treaties that become part of domestic law, especially if they affect public finance and the burden of taxation, as laid down in articles 1, 2.6, 114(2), 201 and 210(1) of the Constitution.

Thirdly, there is a need to evaluate both tax treaties in relation to how they are likely to negatively affect Kenyan tax law. A cost benefit evaluation on the desirability of the Barbados and Singapore tax treaties as specified in the TMRA is necessary.

This is especially because these treaties entail a restriction on tax sovereignty and have major revenue implications; they grant tax benefits and exemptions to foreign investors not available to Kenyan citizens or companies, resulting in reduction of government revenue and directly affecting the public finances and the sharing of the burden of taxation (Constitution Article 201).

Lastly, a public impact analysis on the risk of revenue loss will need to be shared for and national debate. The revenue implications of the various benefits, and possible losses from exemptions in tax treaties must be evaluated against the conceivable gains, or otherwise, of attracting investment from abroad.

About TJNA and EATGN

*TJNA promotes socially-just, accountable and progressive taxation systems in Africa. It advocates for tax policies with pro-poor outcomes and tax systems that curb public resource leakages and enhance domestic resource mobilisation.*

*EATGN is a civil society collaborative initiative of individuals and non-state actor institutions in the East Africa Community (EAC) that share the understanding that taxation is fundamental in achieving social justice and development goals.*

**Contact:** Leonard Wanyama, EATGN Coordinator  
**Email:** lwanyama@taxjusticeafrica.net  
**Phone:** +254 702 629149