LINKAGES BETWEEN DOUBLE TAXATION TREATIES AND BILATERAL INVESTMENT TREATIES

United Nations
Economic Commission for Africa

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Foreword

Africa is at an important crossroads of investment regulation. The global investment landscape is changing at a fast pace, with first movers setting the tone and influencing the content of international rules affecting investment. To date, the continent has been rather reactive in this field, with little participation in forums in which investment and related taxation matters are discussed.

The international investment agreements dialogue taking place globally has evolved considerably in recent years. Efforts to reform the existing Agreements system, in particular the investor-State dispute settlement, have shifted from the stage of initiating to consolidating reforms, targeting instruments such as bilateral investment treaties that are not consonant with today's development policy needs and that have not been conducive to attracting investment. Although an increasing number of African countries have become active in undertaking such reforms, others have yet to embrace this challenge.

There is also a growing realization that investment has become a leading source of external development finance for many developing countries, including those in Africa. As resource mobilization becomes more critical for African countries amid the ambitious goals set out in the 2030 Agenda for Sustainable Development and Agenda 2063: The Africa We Want, and given the commitment investment agreements that have not delivered in terms of attracting greater investment, but also in the context of the continental dialogue on investment that they have been driving. Indeed, since 2013, member States have been promoting a dialogue on investment issues in the context of the Conference of African Ministers of Trade.

In the spirit of advancing this continuing dialogue, the Economic Commission for Africa was recently mandated by the African Union ministers of trade to conduct a study on the linkages between double taxation treaties and bilateral investment treaties. This study, a direct response to this call, provides analytical elements of how the relationship between these two regulatory instruments can affect investment and what impact this may have on the continent's ability to harness and retain investment and, at the same time, avoid illicit financial flows that derive from the investment activities of multinationals through double taxation treaties.

It is my sincere hope that the dissemination of this study will contribute to a better understanding of what African countries need to do to review and develop their bilateral investment treaties and double taxation treaties to support the mobilization of investment that is transformative and developmental for the African people.