Developing a tax treaty strategy for Nigeria

Victor Thuronyi

IMF Legal Department

March 19-20, 2012

Drawbacks in Expansion of Tax Treaty Network: What? Who? How? When? and Why?

Does Nigeria need tax treaties?

- In theory, a country can accomplish much unilaterally, without treaties, but...
- An important network already exists.
- Gradual expansion, adding or renegotiating two or three treaties a year, is probably warranted.

Preparatory analysis

- Identify and quantify important cross-border transactions that would be affected by treaties.
- Inbound investment
- Outbound investment
- Individuals
- Problems with existing treaties
- Prioritise partners on basis of above.

Avoid politically motivated negotiations

- Priority of potential treaty partners should be based on their importance for the tax system, not on political convenience.
- Avoid negotiating a treaty with a country involving no important transactions for which a treaty would be significant.

Review of existing treaties

- Can identify some problems on the face of the treaty.
- Better yet is to quantify extent of misuse or undesired results.
- Prioritise these for renegotiation.
- Treaty partners may be interested in renegotiation anyway to reflect latest updates.

Each treaty is a treaty with the world

- In practice, the most favorable provision in any treaty may be available to the whole world, so avoid concessions.
- Avoid negotiating a treaty with any country that is a tax haven.
- Even some OECD countries have some of the features of tax havens, namely that foreign investors will use that country as a country of convenience to make investments into Nigeria structured to minimize or virtually eliminate Nigerian tax.

Main orientation of model

- The main aim of the treaty network should be to protect Nigeria's right to tax at source.
- Avoid any reduced withholding rates below the 7.5 rates found in the existing treaties.
- Could use UN Model as starting point.
- Not clear whether a model text is needed (for renegotiations existing treaty may be model, or partner may have a model).

Expert advice

- Obtain expert advice from an experienced treaty negotiator.
- If the benefits of the proposed treaty cannot cover the cost of such expert advice, consider why this treaty is being negotiated in the first place.

Capital gains

- Several existing treaties grant extensive taxing rights to the source country.
- Some treaties may, however, unduly restrict Nigeria's right to tax or may not be sufficiently clear.

Management and technical services

- Seems to be a gap in the existing treaties as a taxing right for Nigeria does not seem to exist.

Administration

- If the treaty network is to be expanded, need to make sure you have in place a unit that can administer the treaties well.
- Need for training.

Coordinating treaties with income tax reform

- In reforming domestic law, think about how to expand taxation of foreigners and how far Nigeria wants to go.
- Nigeria needs robust source rules e.g. on capital gains.
- Aggressive source taxation that is conceded by treaties does not make much sense for Nigeria.
- This does not preclude targeting some rules to tax havens.