Legislative Interventions to Improve Tax Expenditure Governance

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TABLE OF **CONTENT**

Understanding the exercise of legislative powers

Law making role

- Developing legal frameworks
- Amending legal frameworks
- Ratification of agreements
- Approval of subsidiary legislation

Oversight role

- Parliamentary questioning
- Motions – critical in the absence of a legal framework
- Commissioning ad hoc committees

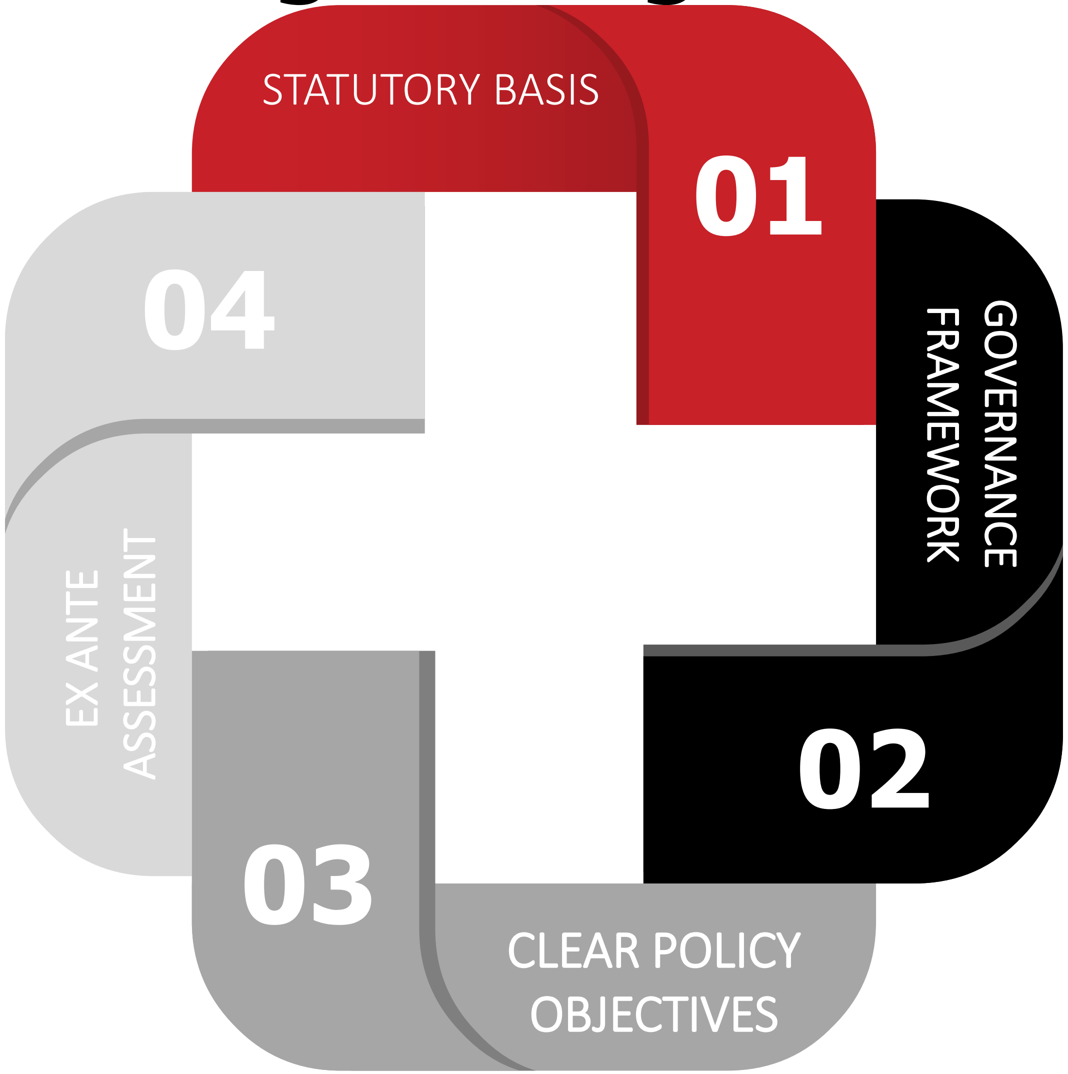
Legislative Interventions during the setting up and design stage

Statutory Basis
Ensuring that all tax expenditures have a statutory basis

Governance framework
Ensuring that a clear governance framework is outlined within the legislative framework

Clear Policy Objectives
Require the relevant authority to demonstrate alignment of TE objectives with national development plans/ policies

Ex ante assessment
Require the relevant authority to demonstrate ex-ante assessment – economic impact assessment



The authority to grant tax expenditures

Parliament often delegates its law-making role on tax expenditures resulting in subsidiary legislation.

It is essential to provide the following safeguards:

Ensure that the authority regularly reports to Parliament

Require that the subsidiary legislation is in harmony with the parent legislation

Require parliamentary approval for the passage of any subsidiary legislation

Case Study – Uganda’s Constitution

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. The Ugandan Public Finance Management Act goes ahead to specify timelines and provides that these reports should include the beneficiaries of the incentives, the reasons for the incentives , the amount foregone and the expected benefits from these incentives.

Tax expenditures pegged on resource/ investment contracts and sector-based legislation

Enact legislation mandating the complete/ partial disclosure of contracts including fiscal terms such as tax incentives

Limit stability/ stabilization clauses within legislation

Promote review and renegotiation of unconscionable terms in contracts

Ensure that the sector and tax legislation are in harmony to avoid conflicts of interest

Case study 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; ……

Checklist for legislative framework for TE reporting and evaluation

A clear definition of tax expenditures should be provided within legislation

There should be an exhaustive list of acceptable reasons as to why certain TEs are not reported on

Legislation should provide for regular, annual and timely manner; It may be necessary to provide specific timelines just as with other processes within the budget cycle

The legislation should also provide for a designated authority mandated with TE reporting

The legal framework should also provide for the evaluation of tax expenditures – provide a specific period for post ante assessment

Case Study – Uganda Bujagali Tax Waiver

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

- 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 effected

African Parliamentary Network on Illicit Financial Flows and Taxation

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Thank you

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