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Addressing Illicit Financial Flows: Submission to FfD3

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The Financial Transparency Coalition (FTC) brings together nine non-governmental organizations[1] across five continents, 150 civil society allies, 14 governments and dozens of the world's foremost experts to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone.

Summary

Ensuring a universal, intergovernmental UN tax body, with adequate resources would be one of the most transformational outcomes from the Third Financing for Development Conference. This is also the only opportunity in the foreseeable future for developing countries to demand cooperation on their own terms in relation to illicit financial flows. This should include public country-by-country reporting, public beneficial ownership registries and multilateral, non-reciprocal automatic exchange of information, for a limited time period, in favour of developing countries.

A Universal, Well-Resourced, UN Intergovernmental Tax Body is in Everyone's Interest

1. An Intergovernmental tax body will ensure the technical and political support required to reach global consensus on international tax matters

Whilst concerns have been expressed about constraining technical discussions on tax, through politicizing the discussions by creating an intergovernmental body, it should be noted that the OECD is itself an intergovernmental body. OECD's Committee on Fiscal Affairs is an intergovernmental body and is supported by OECD's Centre for Tax Policy and Administration (CTPA) that offers technical expertise. CTPA is well resourced with a budget of EUR 10million as per 2013 financial statement (which includes EUR 4million for the work of the Global Forum). They are able to hire experienced staff at the Secretariat, establish working parties where technical documents are produced, which are then approved by the intergovernmental Committee on Fiscal Affairs. In contrast, the UN Tax Committee has an extremely limited budget of some $175,000/year, meets only five days a year, with members that work in their personal capacity and the Secretariat consists of 2.5 full-time staff members.

There are existing examples within the UN system of Intergovernmental bodies with universal membership. For example the UN's Forum on Forests is a subsidiary body under the Economic and Social Council (ECOSOC) with universal membership. There are also examples of technical bodies supporting intergovernmental bodies, for example, the subsidiary bodies on scientific and technical advice under the UN Climate Convention and the Biodiversity Convention. Such bodies have shown themselves capable of negotiating legally binding agreements, despite having to manage significant political and technical differences amongst their membership.

[1] Centre for Budget and Governance Accountability, Christian Aid, Eurodad, Global Financial Integrity, Global Witness, Latin American Network on Debt, Development and Rights, Tax Justice Network, Tax Justice Network-Africa, and Transparency International

2. OECD is answerable to its constituents- and cannot, and does not, represent developing countries

Few developing countries are involved in BEPS, with only G20 developing countries on equal footing, and not a single low income country is involved in decision making. This is far from the inclusive forum required. Outside of the G20 and OECD countries, 13 developing countries[2] are participants in the BEPS project but cannot participate in decision-making and cannot influence the agenda. It would be pertinent to note here a joint proposal by IMF, OECD and World Bank published in 2002 at the time of the Monterrey Conference which stated that *'Although it has extensive contacts with non-OECD countries and considerable awareness of developing country issues through its non-member programs, the* ***OECD does not represent the views of developing countries***[3]*'*

At the BEPS regional consultations organised by OECD in Asia and Latin America, developing countries raised the issue that the balance between source and residence taxation is significant for them[4]. OECD has been unwilling to address this through BEPS since it challenges the underlying principle of residence tax bias in their policies- a principle that favours developed countries.

Essentially, the argument is that the OECD would be happy to invite developing countries to participate but is clear that they won't get a vote.

3. FfD3 is the most appropriate forum to consider this proposal

Strengthening the role of the UN in international tax matters has been discussed since Monterrey and in Doha where there was a commitment to consider this issue at the ECOSOC level, a process which has been taking place every year since 2011. G77 and China have not only expressed disappointment on the lack of movement to fulfil this mandate in this process but has repeatedly demanded an intergovernmental UN body at this annual meeting. From 2011 to 2015, G77 and China have repeated its calls for an intergovernmental UN body to ensure all developing countries have an equal say on tax matters. These statements can be found here:

2011: http://www.g77.org/statement/getstatement.php?id=120727
2012: http://www.g77.org/statement/getstatement.php?id=120727
2013: http://www.g77.org/statement/getstatement.php?id=130529
2014: http://www.un.org/esa/ffd/wp-content/uploads/2014/09/ICTM2014_StatementG77China.pdf
2015: http://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015esm-SouthAfrica.pdf

In the meantime, developing countries have continued to lose an estimated $1trillion every year to illicit financial flows. The Third Financing for Development Conference is not only an appropriate forum to decide this, but it is long overdue and needs to urgently bring to culmination the demands expressed in a limited annual exercise.

4. Global Forum is not a standard setting body, it only implements OECD standards

Global Forum is an OECD-led body based out of Paris, which oversees implementation of standards set by OECD. Its mandate is limited to ensuring the implementation of standards of transparency and exchange of information on request in the tax area[5]. This is nowhere close to the sort of robust global intergovernmental

[2] Albania, Azerbaijan, Bangladesh, Croatia, Jamaica, Kenya, Morocco, Nigeria, Peru, Philippines, Senegal, Tunisia, Viet Nam
[3] http://www.imf.org/external/np/fad/itd/2002/031302.htm
[4] http://www.oecd.org/ctp/Co-chairs-summary-Seoul-2014.pdf and http://www.oecd.org/ctp/co-chair-summary-LACregional-consultation-BEPS.pdf
[5] http://www.oecd.org/tax/transparency/global_forum_background%20brief.pdf

body required to negotiate matters related to international tax cooperation which should, as a minimum, be able to provide the following functions:

1. Setting International norms, principles and standards on international cooperation in tax matters. This should include an international agreement on transparency and on the obligations of countries to refrain from undermining the tax base of other nations.

2. Developing instruments that resolve coordination issues in ways that have positive distributional consequences for developing countries;

3. Developing instruments that provide developing countries with technically sophisticated solutions to the specific challenges they face;

4. Providing ways of giving authority and credibility to positions that individual developing countries might wish to take in the face of opposition from developed countries and businesses; and

5. Acting as a forum that encourages developing countries to explore positions that diverge from the OECD/G-20 orthodox

5. All countries should be represented

There is no reason to believe that secrecy jurisdictions can block debates in the UN any more than they have in the OECD. All stakeholders should be involved in these debates. If participation of secrecy jurisdictions as important as Switzerland, Luxembourg and UK (British Overseas Territories and Crown Dependencies include Cayman Islands, British Virgin Islands, Jersey, Guernsey, Isle of Man, Bermuda) have been considered appropriate in OECD's efforts in tax transparency matters, it should not be a concern at the UN to include small secrecy jurisdictions in the debates.

On the contrary, excluding any jurisdiction from global agreements would in fact increase the risk of isolating such countries and reduce ability to pressure them into cooperating. It may also provide incentives for some excluded countries to consider becoming tax havens, in the absence of a robust, inclusive global body that can enforce standards.

6. A universal UN tax body would be good for business

The absence of a truly global, representative body has meant that developing countries are already taking unilateral decisions that deviate from standards set by OECD and other developed countries. Brazil, China and India have already been innovating in areas such as transfer pricing that departs from the OECD standard. Mongolia and Argentina have unilaterally cancelled tax treaties with their developed counterparts with Mongolia's Vice Finance Minister noting at the time "We started to question why these countries would have greater advantages in Mongolia than us"[6]. It is in the interest of business to avoid such fragmentation of tax standards and ensure that UN is leading global tax cooperation.

Transparency is Key to Addressing Illicit Financial Flows

The Report of **Mbeki's High Level Panel on Illicit Financial Flows from Africa** notes that 'transparency is key to all efforts to arrest IFFs' and **recommends public country-by-country reporting** for MNCs, **public beneficial ownership registries**, and **automatic exchange of information with** application of **'common but differentiated responsibilities'** to assist low capacity countries.

[6] http://www.reuters.com/article/2013/07/16/us-dutch-mongolia-tax-idUSBRE96F0B620130716

1. **Public Country-by-Country Reporting**

Unfortunately, one of the key measures adopted by the OECD and G20 in order to combat profit shifting, the reporting of financial information by companies on a country-by-country basis, may not be shared quickly or easily with developing countries. As per the current OECD standard, this crucial information will only be available to developing countries after specific, formal request and review of data privacy standards, etc.

Making country by country reporting information publicly available, as is already required of consolidated financial information, **is the most cost effective and efficient way of ensuring that developing countries have timely and low-cost access to information that they need** in order to determine the risk of a given multinational company engaging in aggressive profit-shifting activities.

2. **Public Beneficial Ownership Registries**

Companies with hidden owners or anonymous companies, can be used to hide money from tax collectors, or hide the proceeds of crimes that are destabilizing to developing countries, like drug trafficking, human trafficking that affects women disproportionately, animal poaching, bribery, corruption, production and sale of counterfeit goods, etc. Often, these anonymous companies are created in developed countries.

A report by The B Team- a global group of business leaders- made a strong business case for beneficial ownership transparency. They noted that beneficial ownership transparency benefits business by increasing competitiveness, reducing risk by knowing who you are doing business with, managing financial exposure and increasing stability[7]. Beneficial ownership information should be publicly available, so that developing country governments could more easily follow the money trails of tax evasion, drug trade, bribery, human trafficking, etc. that is originating in their country.

3. **Automatic Exchange of Information**

Developing countries have a greater need for information from other countries to effectively tax their international taxpayers. An estimated 33% of all assets of the Middle East and Africa are held offshore and about 25% for Latin America. Globally, it is 6%[8]. Yet the recent reforms on information exchange currently only ensure that OECD/G20 countries will have automatic access to a range of information on their taxpayers' activities from around the world.

FfD is the only opportunity to guarantee developing country access to information in the foreseeable future by ensuring 'non-reciprocal' access to information from G20/OECD countries, for a limited time period, without expecting to send information back. This will enable developing countries to benefit from receiving information before bearing the costs of compliance.

Thank you for your consideration of these important points. Questions or comments should be addressed to:

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[7] The B Team, The Business Case for Ending Anonymous Companies: a Collective Effort, January 2015, http://bteam.org/resources/ending-anonymous-companies-report-published/

[8] Global Forum on Transparency and Exchange of Information for Tax Purposes, Automatic Exchange of Information: A Roadmap for Developing Country Participation, August 2014