Briefing for Government Delegations:

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

Civil Society Organizations are united in supporting the G77 and China's call for a global intergovernmental tax body at the United Nations. The body should take the form of a Functional Commission under ECOSOC so outcomes are the result of intergovernmental negotiations, with universal membership and adequate resources from core UN funds with priority for developing country participation.

Concern 1: Technical discussions on tax will be discouraged by 'politicizing' the discussions.

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

Concern 2: Universal membership will make the body too cumbersome to reach agreements.

Response: 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.

Concern 3: The OECD has reached out to developing countries to participate in BEPS and other processes.

Response: 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 and OECD accession countries on equal footing[1], 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.

A joint proposal by IMF, OECD and World Bank published in 2002 at the time of the Monterrey Conference 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, developing countries raised the issue that the balance

[1] Argentina, Brazil, Colombia, India, Indonesia, Latvia, People's Republic of China, Russian Federation, Saudi Arabia, South Africa

[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

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.

Concern 4: FfD3 is not the appropriate forum to consider this proposal

Response: 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, from 2011 to 2015, an intergovernmental UN body at this annual meeting.

What forum could be more appropriate for this proposal than FfD?

Concern 5: The Global Forum on Transparency and Exchange of Information for Tax Purposes exists and could perform these functions.

Response: Global Forum is not a standard setting body, it only implements OECD standards. It is an OECD-led body based in 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 very far from the sort of robust global intergovernmental body required to negotiate matters related to international tax cooperation.

Concern 6: Universal representation would mean including tax havens and secrecy jurisdictions in the body.

Response: There is no reason to believe that secrecy jurisdictions or tax havens 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.

Concern 7: A universal UN tax body might inhibit global business.

Response: 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].

This trend might intensify with the uncertainties that are expected to come along with the BEPS initiative. It is in the interest of business to avoid such fragmentation of tax standards and ensure that UN is leading global tax cooperation.

[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

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