FINANCIAL TRANSPARENCY COALITION

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Recommendations to the United Nations Conference on Trade and Development (UNCTAD 14) on Illicit Financial Flows

14 June 2016

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

This submission notes the importance of UNCTAD's role in broadly three areas:

1. Support development of a normative definition of 'illicit financial flows' to aid implementation of commitments in the SDGs and FfD to curtail illicit financial flows;
2. Address crucial gaps that still remain in current global transparency initiatives from the perspective of developing countries' contexts, to ensure these global standards are inclusive and effective;
3. Contribute towards full and equal participation of developing countries in international tax cooperation by establishing an intergovernmental group of tax experts to complement and inform the work of ECOSOC.

1. Defining Illicit Financial Flows

Paragraph 15 of the pre-conference negotiation text published on 23 May 2016 references the issue of illicit financial flows as highlighted below:

15. The need for effective global and regional [action] [cooperation] to tackle cross-border challenges is also greater than ever before, and this requires multilateralism. Strengthening multilateralism therefore remains a continuing priority, particularly in addressing challenges that require [action through international cooperation such as [illicit capital flows, and][tax evasion [and avoidance (del)] (del,)], [combating (add)] illicit [finance and corruption (add)] [capital flows (del)], the [organization and impacts (del)] [complexities (add)] of global value chains, macroeconomic policy coordination, [sovereign debt crisis prevention and resolution, (del)] [sustainable sovereign debt management, (add)] accelerate the recovery of the global economy and trade and other emerging issues. Multilateralism, including through the agreed principles and provisions of relevant international agreements can also avert global environmental [and climate (add)] [catastrophe (del)] [degradation (add)][,], and eradicate social deprivation. [The 2030 Agenda for Sustainable Development both creates the opportunity for renewed multilateralism and global economic cooperation and highlights their necessity to achieve agreed international goals. (del)]

Recommendations:

a) Replace 'illicit capital flows' with 'illicit financial flows', as adopted in the SDGs and the Third Financing for Development (FfD) outcome document, and highlight that tax avoidance and evasion are included in the concept 'illicit financial flows'. Thus, the wording of **paragraph 15** should be

[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

changed to: '**illicit ~~capital~~ financial flows, ~~and~~ including tax evasion and avoidance**'. Delete 'illicit finance' as that is not accepted terminology in either SDGs or FfD.

b) Mandate UNCTAD to support efforts to develop a normative definition of 'illicit financial flows' (IFFs) that fully reflects the corporate, corruption, and criminal contributions to the phenomenon by inserting the following new **sub-paragraph in paragraph 40: <u>Support the development of a normative definition of 'illicit financial flows'</u>.**

As efforts are on to operationalize commitments in the SDGs and FfD on illicit financial flows, it is crucial that UNCTAD supports the development of a normative definition of 'illicit financial flows' building on the report to the Human Rights Council on Illicit Financial Flows and Human Rights. This report recommends adoption of a broad illicit financial flows definition that includes proceeds of illegal activities such as crime and corruption as well as tax abuse covering both tax evasion and tax avoidance. Excluding tax avoidance would have detrimental consequences on revenue mobilization as the report notes that 'tax-related illicit financial flows has the potential to make the largest fiscal impact and would enlarge domestic resources available for the realization of human rights, including social, economic and cultural rights'[2].

2. Transparency Is Crucial to Address Illicit Financial Flows

The Report of Mbeki's High Level Panel on Illicit Financial Flows from Africa, adopted by the African Union, notes that 'transparency is key to all efforts to arrest IFFs'[3]. Despite progress made by OECD and G20 on advancing the global transparency agenda, gaps remain from the perspective of developing countries that needs to be addressed.

2.1 Public Country by Country Reporting

Paragraph 82 (z) of the pre-conference negotiation text published on 23 May 2016 references the issue of corporate transparency and accounting as highlighted below:

82. (z) Advance its work on international standards of accounting and reporting by promoting best practices in corporate transparency and accounting, including through the use of its Accounting Development Tool [, and in coordination with international efforts in the field of sustainability accounting (add)];

Recommendations

UNCTAD should be mandated to develop guidelines and build global consensus towards public country by country reporting. Making country by country reporting information publicly available 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. As per the current OECD standard, this crucial information will not be easily available to developing countries requiring specific, formal request and review of data privacy standards, etc.

During the Anti-Corruption Summit in May 2016 in London, 13 governments[4] expressed interest in a global commitment for public country by country reporting, yet there is currently no international process in place to promote such a commitment.

Therefore, the following text should be inserted in **paragraph 82(z)**:

> **Advance its work on international standards of accounting and reporting by promoting best practices in corporate transparency and accounting, including <u>public country by country reporting, *inter alia*</u> through the use of its Accounting Development Tool**

[2] Para 5. Report can be accessed here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/61
[3] http://www.uneca.org/publications/illicit-financial-flows
[4] Nigeria, Kenya, Afghanistan, Georgia, India, Russia, France, Italy, Netherlands, Spain, the UK, Mexico and Australia

2.2 Public Beneficial Ownership Registries

Paragraph 22 of the pre-conference negotiation text published on 23 May 2016 references the issue of combating tax evasion and corruption as highlighted below:

22. [Effective taxation, including combating tax evasion by multi-national corporations, will be critical in the mobilization of resources for implementation of the SDGs and overall economic advancement of developing countries. (add)] [Taxation will play a critical role in mobilizing resources to (del)] [finance the infrastructure investments essential to harnessing trade for development and achieving (del)] [implement (add)] [the Sustainable Development Goals. (del)] [, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation, and reducing opportunities for tax avoidance. Nevertheless, gaps and weaknesses in tax policies and enforcement by some countries exacerbate (add)] [However, the current system of taxing global profits is problematic exacerbating (del)] inequality both within and across countries [and allowing tax avoidance and tax evasion by multinational companies which significantly impair the capacity of host countries to achieve global goals (del)]. These are global [ongoing (add)] issues that require multilateral action. [Current initiatives should be more inclusive with regards to the participation of developing countries, so as to better address their specific needs and implementation challenges. (add)] (del paragraph)

Recommendations

UNCTAD should be mandated to develop guidelines and build global consensus towards public beneficial ownership registries. Beneficial ownership information should be publicly available, so that governments, including from developing countries, could more easily follow the money trails of tax evasion, drug trade, bribery, human trafficking, etc. that is originating in their country. During the Anti-Corruption Summit in May 2016 in London, 8 governments[5] expressed interest in the establishment of public registers of beneficial owners, but no international guidelines currently exist to support countries in such efforts.

Therefore, the following text should be inserted in **paragraph 22**:

> **…including by combating tax evasion and corruption through <u>public registries of beneficial owners of companies and at least comprehensive registration of beneficial owners of trusts, as well as other forms of</u> strengthened national regulation and increased international cooperation…**

And the following sub-paragraph should be inserted in paragraph 40:

> **40, new subparagraph: <u>Develop guidelines and promote global consensus towards public beneficial ownership registers</u>.**

2.3 Non-reciprocal Automatic Exchange of Information for Developing Countries

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%[6]. Yet the recent reforms on information exchange does not accommodate the unique challenges of developing countries by providing for asymmetric obligations as they adjust to the costs.

UNCTAD should be mandated to develop global consensus and guidelines on ensuring a limited transition period for low capacity developing countries by which they receive tax information automatically without requiring to send information back. This will enable developing countries to benefit from receiving information before bearing the costs of compliance.

The following sub-paragraph should be inserted in paragraph 40:

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[5] UK, Netherlands, France, Ukraine, Afghanistan, Nigeria, Kenya and Ghana

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

40, new subparagraph: <u>Develop guidelines and promote global consensus towards ensuring a limited transition period for low capacity developing countries to receive tax information automatically without requiring to send information back</u>.

2.4 Statistics on Size of Offshore Financial Market to Monitor Automatic Exchange of Information

There is a lack of high quality data on the size and composition of the offshore financial market; as a result, estimates on the size alone range from $7-$32trillion. There is a clear need to improve the statistics and enable better research. If information is collected by jurisdictions on all non-resident account holders the data would be available for authorities to aggregate it into "totals" by country of residence, without identifying any individual or entity account holder (and so would not cause any concern over confidentiality), but would be able to show, for example, the size of assets and number of accounts held by residents from each jurisdiction in the world.

Such data would enable a much better understanding of the size and composition of offshore finance, and how it changes over time, revealing avoidance schemes and other strategies to avoid reporting of information. UNCTAD should be mandated to develop global consensus to collect, collate and publish these aggregate statistics.

Therefore the following text should be added in 82 (aa)

> [Maintain UNCTAD's position as the primary source for global statistics and (add)] {Continue to develop [new (del)] [up to date, timely and pertinent (add)] statistics on investment, **<u>size of offshore finance by publishing aggregate data i.e. totals by country of residence of all account holders,</u>** the creative economy and the global economy..

3. Strengthen International Institutional Architecture

Paragraphs 37 and 40 of the pre-conference negotiation text published on 23 May 2016 references the issue of strengthening international tax cooperation as highlighted below:

37. Enhancing international cooperation on tax matters [will be (del)] [is (add)] essential to [progress towards the Sustainable Development Goals and (del)] stem the rise in inequality, [including (del)] multilateral action to address [tax avoidance and (del)] tax evasion [and corruption (add)].] [[including multilateral action to address tax avoidance and tax evasion (del)]]

40. [(l bis.) Assist developing countries in enhancing their capacities and capabilities in international tax matters and support their participation, on an equal footing in global initiatives in international taxation; (add)]

[(z) Establish a standing intergovernmental group of experts to address tax issues including international tax issues and to assist countries better mobilize and employ fiscal revenues including through international initiatives to counter tax avoidance and tax evasion as well as the capabilities of developing countries to address tax avoidance and tax evasion practices; (add)]

Recommendation

We support the recognition in the above paragraphs of the need to ensure full and equal participation of developing countries, on equal footing, in international tax cooperation. The mandate to UNCTAD in 40 (z) is crucial in this regard and **we recommend that this body should complement and inform the work of ECOSOC**. In parallel, governments should reinforce efforts to strengthen international tax cooperation in the current UN Tax Committee, including by endorsing to the long-standing proposal by developing countries to upgrade it to an intergovernmental commission in ECOSOC.

Thank you for your consideration of these important points. Questions or comments should be addressed to: Pooja Rangaprasad at pooja@financialtransparency.org