Cyril Ramaphosa
President of Republic of South Africa
Republic of South Africa
Via email: president@po.gov.za

Cc: Mark Kingon
Acting Commissioner
South African Revenue Services
Republic of South Africa
Via email: mkingon@sars.gov.za

July 26, 2018

Subject: Policy recommendations for BRICS' nations with the mandate to curb illicit financial flows on the occasion of the 10th BRICS Summit July 25-27, 2018 in South Africa

Dear Sir,

The Financial Transparency Coalition is a global civil society network of twelve non-governmental organizations. We work together to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone.[1]

We are encouraged to see the adoption of the mandate to curb illicit financial flows last month at the BRICS Tax and Customs meeting. In this regard, we are writing to share some policy recommendations for a unified strategy against illicit financial flows ahead of the 10th BRICS Summit.

Illicit financial flows (IFFs) are funds that generate from activities like crime, corruption, trade misinvoicing, tax abuse (evasion, avoidance and dodging) by multinational corporations and elite, abusive transfer pricing, facilitated by a network of enablers, gatekeepers and legal structures. Despite being a key part of the Sustainable Development Goals (SDGs) and the Financing for Development Agenda, the definition of IFFs is limited in its scope for national governments to appropriately prioritise.

IFFs are known to exacerbate income and wealth inequalities[2]. We would urge the BRICS nations to **adopt a progressive and well-rounded definition of illicit financial flows** that truly reflects the abusive impact on

[1] www.financialtransparency.org

[2] World Inequality Report (2018).

human rights[3] in the context of developing countries and emerging economies. Periodic national level monitoring and review of target 16.4 of Goal 16 of the SDGs is crucial to assess gaps and progress in tackling illicit finance.

Furthermore, we would like to recommend the following policy initiatives:

1. **Publish Aggregate Data on Secretive and Offshore Jurisdictions:** As BRICS countries are a part of the Common Reporting Standard, publishing aggregate data on residents from each jurisdiction after collecting financial information would provide key insights into the workings of influential financial centres. The unreported wealth and assets show illicit financial flows occurring as a result of abusing loopholes in the laws and regulations in the home jurisdiction.

2. **Publicly Available Information on Beneficial Ownership of Legal Entities and Arrangements:** Legal entities (trusts, associations, co-operative societies, foundations, companies and limited liability partnerships) and arrangements are used to obscure ownership structures to avoid oversight and regulatory state authorities. Scandals like the Panama Papers and Paradise Papers have given a peak into the size and reach of offshore financial centres in influencing investment, trade and business decisions. We call upon BRICS countries to commit to public beneficial ownership registries of all legal entities in an open data format accessible for public and state scrutiny.

3. **Publish Country-by Country (CbC) reporting information publicly for all large multinational corporations:** Profit shifting, tax abuse and tax avoidance by multinational enterprises (MNEs) have been identified by several international actors as a key source of IFFs. It is imperative to have publicly available data on a country-by-country basis for all large MNEs[4], so that those who do not currently have access, including civil society, academia, media, government authorities outside the tax authority and multilateral institutions, will be able to access it, analyse and identify risks of IFFs, and help ensure that IFFs are tackled at all levels.

4. **Publish direction of trade data on a national basis,** ensuring how the direction of trade data is included. For instance, the difference between Free on Board (FOB) and Cost, Insurance and Freight (CIF) is explicitly stated in how it is calculated, as methods of reporting concerning how transit country data, trade via special purpose entities (SPEs), and other distortions are explicitly estimated to better understand underpricing and overpricing for purposes (including, but not limited to) dodging customs levies and quotas, exporting stolen goods, misrepresenting goods for smuggling of illicit goods such as drugs and protected wildlife disguised by legal goods can better be spotted through irregularities, mismatches between trade and customs data, and other filters and methods. Disaggregated data containing information on the tariff rate applied, export subsidies, origin decomposition etc. on transaction level should also be published[5].

5. **Publish all cases of capital gains taxes paid by corporates and individuals,** ensuring that corporates do not try to engage in indirect transfers of property and assets. It's important to keep a public registry of payments of capital gains taxes above a threshold of $1 million arising from sales of assets (including but not limited to) equity ownership, capital goods, etc.

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[3] United Nations General Assembly, Human Rights Council (2016). Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

[4] A company that exceeds two of the three following requirements: 1. Balance sheet total €20 million 2. Net turnover €40 million and 3. 250 employees

[5] UNCTAD (2014)

6. **Publish all tax incentives received by corporates and individuals:** Countries must publish tax exemptions and incentives offered to corporations in detail in the annual budget and audit reports brought out by the finance and treasury departments. The abusive design and abusive use of tax incentive regimes such as Special Economic Zones (SEZ), Export Processing Zones (EPZ), sector wide exemptions should be published both in their aggregate form to identify the overall revenue impact of such exemptions on public revenue mobilisation, as well as on an individual basis of each and every exemption above $1 million in order to spot any irregularities and abusive cases of utilising tax incentive regimes.

7. **Support the establishment of an intergovernmental tax commission under the auspices of the United Nations:** Ultimately, illicit financial flows are a global problem, and national efforts on this area must be reinforced by global agreements. While forums such as the OECD's Global Forum and Inclusive Framework have been set up to implement standards that have already been agreed by the OECD and G20, we do not currently have an international body where all countries, including developing countries, can participate on a truly equal footing in the negotiation of global solutions to international tax avoidance and evasion. Therefore, as a matter of urgency, a well-resourced, intergovernmental commission with universal membership must be established under the United Nations, with the purpose of ensuring transparency and cooperation in international tax matters.

We would be happy to provide further information on this, kindly contact us by writing to Sargon Nissan of Financial Transparency Coalition at snissan@financialtransparency.org.

Yours sincerely,

Sargon Nissan
Director
Financial Transparency Coalition