

24th April 2020

Subject: Policy recommendations for G77 countries on the occasion of the virtual consultation between UN Member States and the FACTI Panel.

In advance of the virtual consultation between UN Member States and the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (hereafter, FACTI Panel). The Panel should be made aware by G77 member countries of the problems they face in relation to combatting illicit financial flows (IFFs), in particular tax abuse. Secondly, the bodies of the UN should be pushed to support the Panel's mandate, including consideration of the challenge of IFFs.

The FACTI panel represents a vital opportunity to move forward the stalled debate around defining and tackling IFFs, an issue whose importance has never been greater given the ongoing COVID-19 pandemic. The pandemic's social and economic consequences are exacerbated by the deep inequalities between and within countries, of which IFFs are a major driver. The FACTI Panel has the potential to push forward important components of a global agenda to 'build back better'.

Launched in March 2020, the FACTI Panel has recently narrowed down its areas of work into three clusters to be the Panel's focus – 1) improve cooperation in tax matters, 2) accountability, public reporting and anti-corruption measures and 3) cooperation and settling disputes. While the Panel recognizes the importance of global governance and issues related to the political economy of reforms, these are not yet sufficiently reflected in its anticipated work program.

The FACTI panel must also situate its three areas of focus within a human rights framework. The panel must register and underline the commitment made to the Sustainable Development Goals by countries; it also underpins efforts to achieve substantive gender equality and militates against the marginalisation and discrimination of the most vulnerable.

The following points reflect the Financial Transparency Coalition's views as to the critical points that the FACTI panel must consider:

1. The current institutional architecture for global economic governance is fragmented and compartmentalized in multiple international financial institutions that frame or revise rules on tax, transparency, anti-money laundering, anti-corruption, etc. - affecting all countries. Developing countries are systematically under-represented in most of these bodies, and their interests and priorities are diminished or subordinated to those of developed countries. The bodies also under-represent the interests of people living in poverty that are also marginalised by the same system of global economic governance. This especially pertains to women who are disproportionately affected by the dysfunctional tax system at all levels; global, national and local. We emphasize the observation made by the G77 countries in the past year that there is still no global platform for international tax matters at the intergovernmental level and reiterate our support to their call for the UN Committee of Experts in Tax Matters to be upgraded into an intergovernmental funded body.
2. Promoting accountability - There is a need to integrate tax transparency measures like automatic information exchange, public beneficial ownership of legal entities and arrangements (companies, trusts, foundations, cooperative societies, limited liability partnerships) and public country-by-country reporting. In addition, mechanisms exist to document flows of finance and could underpin the accountability of financial flows, for example an over-whelming majority of IFFs are cross-border in nature and are channeled via the SWIFT financial transaction

messaging system¹. We also call for all companies to publish their corporate structures and provide subsidiary accounts openly free of charge so that they can be held accountable for their activities, and in view of preventing tax abuses.

3. Further, disclosure requirements on the complexity of corporate structures is central in unpacking profit shifting strategies employed by them, which includes public country by country reporting as cited above.
4. Cluster 3 on settling disputes requires more clarity – in particular the framing of this issue is highly significant. The role played by international Investor-State Dispute Settlement (ISDS) mechanisms is a source of concern if proposed as a viable mechanism as these often violate State sovereignty and threaten social, economic and political rights. In March 2019, seven UN Independent experts published a letter² to the Working Group III on ISDS Reform highlighting the ISDS mechanisms' well-established incompatibility with international human rights law and asymmetrical system that encroaches upon the States' fiscal space. Any dispute resolution mechanisms must be public, transparent and accountable to all parties, and resist capture by one interested group of actors, public or private.
5. Asset recovery remains a major component of policy debates around anti-corruption and transparency measures. However, systematic processes of prompt return of assets from countries that benefit from the purchase of property, art, or other high-value items are absent and/or slow. Additionally, the Panel should interrogate the role of the facilitators of these losses to taxpayers and domestic revenues, including audit, advisory and legal services providers.

We urge you to speak out in support of these proposals made in the letter and extend your support towards the work of the FACTI panel.

Yours Sincerely,

Sargon Nissan
Director
Financial Transparency Coalition

¹ See for example *SWIFT data can be a global vantage point for tackling global money laundering July 2019*,. <https://financialtransparency.org/swift-data-can-global-vantage-point-tackling-global-money-laundering/>

² OHCHR (2019). UN experts send letter to UNCITRAL Working Group III on ISDS Reform urging systemic changes to the ISDS system. https://www.ohchr.org/Documents/Issues/Development/IEDebt/OL_ARM_07.03.19_1.2019.pdf