**Statements prepared by civil society for the session on International Tax Cooperation.**
**9th of December. Financing for Development Informal sessions.**

**NB:** Given the impossibility for civil society to make its statement during the session on International Tax Cooperation, a document of clarification of points raised by the OECD representative has been produced and made available to state representatives. This content is here reproduced below the prepared statement.

## I. PREPARED STATEMENT FOR INTERNATIONAL TAX COOPERATION SESSION

Progressive, transparent and accountable taxation systems or, more simply stated, tax justice, should be central to any sustainable development strategy.

However, after decades of giving in their tax rights to rich countries through OECD model of double tax treaties, most of developing countries are now excluded from the fight against capital flight that further undermines domestic resource mobilization and development challenges[1].

And recently, the milestone IMF report on the spillover effects[2] of tax policies in the north on developing countries, has offered another solid diagnostic of current ineffective international tax cooperation.

The UN Committee of Expert on Tax Matters has provided a useful work for developing countries on tax rights issues, and more recently on tax transparency, BEPS issues and extractive sector. However, the absence of political mandate and financial means keeps preventing developing countries' tax officials from being able to significantly influence international tax standards.

An international forum allowing a truly global negotiation process with a broader mandate for reforms is crucially needed, which will ensure that all countries in the world have an equal say on adopting fairer tax rules to fight non double taxation as well as double no taxation and tax transparency.

Most of developing countries have been demanded an intergovernmental tax body for years. In December 2014, the synthesis report of the Secretary General on Post 2015 called for "an intergovernmental committee on tax cooperation, under the auspices of the United Nations".

A main outcome of the Financing for Development Conference in Addis Ababa should be settling a process toward such intergovernmental UN tax body that enable all countries to contribute to international tax norms on an equal footing.

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[1] Conservative solid estimates put the annual losses caused by illicit financial flows at USD 6 trillion on average during the past decade, with an average increase of 10% every year bringing capital flight from developing countries to almost USD 1 trillion in 2011,[1] 80% of it coming from to systemic and deliberate minimization of the tax share of multinational companies and wealthy individuals. Source: Kar, Dev and Brian LeBlanc 2013. Illicit Financial Flows from Developing Countries 2002-2011. Global Financial Integrity, Washington DC. December.

[2] See IMF report cited in previous footnote.

Agreeing a process to establish such a body, and promoting international cooperation in tax matters, and tackling illicit financial flows must be addressed throughout the negotiating process; from January until the conference itself. Moreover, financing for development leaders should make provision for a 'tax forum' during the Addis Ababa conference to ensure the required action is agreed.

As indispensable measures, we recommend the third Financing for development Conference to adopt in priority the following:

- **Strengthen the role of the UN in promoting international cooperation on tax matters, including setting up an intergovernmental tax body,** as demanded several times by many developing countries;

- **Promote a truly multilateral automatic exchange of information that provide a temporary non-reciprocal mechanism for low-income countries**, and promote publicly-available registries of disclosure of beneficial ownership of companies;

- **Promote country-by-country reporting for transnational corporation, that is made public** and accessible to developing countries' tax administrations and local civil society;

- **Promote, in addition to inclusive reforms of international tax governance, a cooperation that supports building national capacities** for tax policy, collection and enforcement, in particular that what relates to international tax issues;

- **Promote alternatives to the arm's length principle** and develop analyses and norms around alternative methods

- **Implement financial transactions taxes** (FTTs) which, in addition to their potential to keep sustainable resource flows towards human and environmental development initiatives, a) limit the incentives for damaging short-term speculation in financial markets helping connect finance to the real economy and b) reduce systemic risks.

## II. CONTENT OF THE HARD DOCUMENT DISTRIBUTED IN THE NEGOTIATION ROOM.

## Clarification of points raised by Marlies de Ruiter from OECD in the FfD session on Tax Matters, December 9 2014.

Endorsed by LATINDADD, AFRODAD, EURODAD, CIDSE, OXFAM, Public Service International
December 10, 2014

According to the OECD, developing countries will now be moving from "consultation" to "participation" in the process on Base Erosion and Profit Shifting (BEPS). However:

- **The invitation to participate is limited to very few countries**. The OECD decision says: "*about 10 developing countries, including Albania, Jamaica, Kenya, Peru, Philippines, Senegal and Tunisia, will be invited to participate in meetings of the key BEPS decision making body*". More than 100 countries – in particular least developed countries – remain excluded from the BEPS decision making process.[3]
- **The inclusion of 10 more developing countries in the BEPS process comes after the key decisions have been made**. The BEPS Action Plan was adopted in 2013, and the first year of decision making is already completed. Since the BEPS Action Plan only runs until 2015, the expansion in developing country participation comes at a very late stage.
- While the OECD will be conducting **regional and international consultations** for developing countries (and stakeholders), this does not ensure that developing country interests will be respected in the OECD decision making process.
- **The following issues, which developing countries have highlighted as crucial for them, have been excluded from the BEPS process**:
    - Taxation and the extractive sector
    - Allocation of taxing rights between countries
    - Taxation of services

<u>According to the OECD, it would be "duplication of efforts" on "shared and overlapping aims" to establish an intergovernmental body on tax matters under the UN. However:</u>

- The **OECD processes** exclude more than 100 countries from decision making, and thus cannot be compared to an intergovernmental UN body. The outcomes of the OECD processes (see below) reflect the lack of developing country representation.
- While the **existing UN Tax Committe**e has made valuable contributions to the development of international tax standards, it is "only" a committee of 25 experts acting in their personal capacity who do not speak on behalf of their countries. Therefore, this committee is no alternative to a real intergovernmental body.

<u>According to the OECD, their system is very similar to the UN system. However:</u>

- **Model tax treaties**: There are some very important differences between the OECD and the UN model tax treaties. In general, the UN model preserves greater taxing rights for "source countries", which is the category that developing countries normally fall into, whereas the OECD model protects the taxing rights of "residence countries" – meaning the countries where companies have their headquarters (mainly OECD countries) at the expense of source countries.[4]

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[3] OECD announcement of its new Strategy for Deepening Developing Country Engagement in the Base Erosion and Profit Shifting (BEPS) Project. OECD, November 2014. http://www.oecd.org/newsroom/developing-countries-toplay-greater-role-in-oecdg20-efforts-to-curb-corporate-tax-avoidance.htm

[4] The UN Model Tax Convention as Compared with the OECD Model Tax Convention. Michael Lennard, Asia-Pacific Tax Bulletin, 2009. http://www.taxjustice.net/cms/upload/pdf/Lennard_0902_UN_Vs_OECD.pdf

- The UN model treaty addresses taxation of "services" as a specific element which is of particular importance to developing countries. The OECD model does not include such an element.
- The OECD has a strong focus on issues which are important to developed countries, including the "digital economy", whereas issues that are crucial to developing countries, such as the taxation of extractive industries, are not included.
- **Membership**: The OECD membership includes 34 countries, of which the overwhelming majority are developed countries.

According to the OECD, the tax systems will now become more transparent. However:

- **Automatic information exchange:** "Automatic" doesn't mean that this information will be available to all governments, since signing of the new Multilateral Competent Authority Agreement on automatic exchange of information does not commit governments to exchange information with all other governments. For example, Switzerland has announced that the focus is on exchanging information with the EU, US as well as countries which it has "close economic and political ties and which provide their taxpayers with sufficient scope for regularisation and which are considered to be important and promising in terms of their market potential for Switzerland's financial industry".[5]
  Furthermore, participation in automatic information exchange requires "reciprocity", which means that countries will not be able to receive any information unless they have the capacity to return the same quality of data back to the sender. This is expected to de facto exclude least developed countries from participating.
- **Country by country reporting:** "Transparency" does not mean that the information will be available to everyone. After concerns raised by multinational corporations, the OECD has decided that all information which is "sensitive" for corporations must be kept fully confidential (this includes information which can be used to disclose profit shifting). The confidential information will be shared with a limited number of tax administrations. The OECD has not yet decided whether tax administrations from non-OECD and non-G20 countries will be granted access to the information.

According to the OECD, the new initiatives will prevent profit shifting. However:

- **Harmful tax practices**: After a year of BEPS negotiations, OECD has been unable to reach agreement on ending harmful tax practices and instead of removing potentially damaging structures such as the UK's "patent box", several other OECD member states have announced an intention to follow the UK example and

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[5] Switzerland's Federal Department of Finance. Questions and Answers on the Automatic Exchange of Information. October 8, 2014. http://www.news.admin.ch/NSBSubscriber/message/attachments/36827.pdf

introduce "patent boxes" themselves. Harmful tax competition has been on the agenda of the OECD since 1997, with very limited progress.

- **Anti-abuse**: The OECD is considering anti-abuse measures which build on the OECD model tax treaty system (see above). This means that the inequities created by the OECD model treaty system will also impact the BEPS solutions.