FACTCOALITION
Financial Accountability & Corporate Transparency

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TAX JUSTICE NETWORK USA

July 14, 2015

The Honorable Secretary Jacob J. Lew
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Dear Secretary Lew:

The Financial Accountability and Corporate Transparency (FACT) Coalition, together with Tax Justice Network USA, strongly urges you to support the creation of an inclusive intergovernmental tax body at the Third Financing for Development Conference in Addis Ababa, Ethiopia.

A universal, well-resourced, UN Intergovernmental Tax Body is critical to the ability of developing countries to implement sustainable tax systems within their borders. It is estimated that for every dollar of foreign aid a developing country receives, ten dollars of capital flow out of the country through illicit means, a significant portion of which is trade mis-invoicing. These countries must be able to develop the tools to stem the tide of illicit capital flows, including tax avoidance and evasion. An intergovernmental tax body would be an enormous help with these problems. The main reasons for the urgent establishment of such an entity are outlined below.

We urge in the strongest possible way that you endorse an intergovernmental tax body while in Addis.

We wish you safe travels.

Sincerely,

Rebecca J. Wilkins

Rebecca J. Wilkins
The FACT Coalition
TJN-USA Network

cc: Mr. Robert Stack

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

1. **A universal Intergovernmental tax body will ensure the technical and political support required to reach global consensus on international tax matters.** While concerns have been expressed about constraining technical discussions on tax, through politicizing the discussions by creating an intergovernmental body, 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 (which includes EUR 4million for the work of the Global Forum). They are able to hire experienced staff at the Secretariat, establish working parties where technical documents are produced, which are then approved by the Intergovernmental Committee on Fiscal Affairs. 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.

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.

2. **OECD is answerable to its constituents and cannot, and does not, represent developing countries.** Few developing countries are involved in the OECD BEPS process, with only G20 developing countries on equal footing, 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 are participants in the BEPS project but cannot participate in decision-making and cannot influence the agenda. It would be pertinent to note here a joint proposal by IMF, OECD and World Bank published in 2002 at the time of the Monterrey Conference which 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.' At the BEPS regional consultations organized by OECD in Asia and Latin America, developing countries raised the issue that the balance between source and residence taxation is significant for them. 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 favors 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.

3. **FfD3 is the most appropriate forum to consider this proposal.** 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 an intergovernmental UN body at this annual meeting. From 2011 to 2015, G77 and China have repeated its calls for an intergovernmental UN body to ensure all developing countries have an equal say on tax matters.

In the meantime, developing countries have continued to lose an estimated $1trillion every year to illicit financial flows. The Third Financing for Development Conference is not only an appropriate forum to decide this, but it is long overdue and needs to urgently bring to culmination the demands expressed in a limited annual exercise.

4. **The Global Forum on Transparency and Exchange of Tax Information is not an appropriate body for these important tax matters**. The Global Forum is an OECD-led body based out of Paris, which oversees implementation of standards set by OECD. This is nowhere close to the sort of robust global intergovernmental body required to negotiate matters related to international tax cooperation which should, as a minimum, be able to provide the following functions:

- Setting International norms, principles and standards on international cooperation in tax matters. This should include an international agreement on transparency and on the obligations of countries to refrain from undermining the tax base of other nations.
- Developing instruments that resolve coordination issues in ways that have positive distributional consequences for developing countries;
- Developing instruments that provide developing countries with technically sophisticated solutions to the specific challenges they face;
- Providing ways of giving authority and credibility to positions that individual developing countries might wish to take in the face of opposition from developed countries and businesses; and acting as a forum that encourages developing countries to explore positions that diverge from the OECD/G-20 orthodox;

5. **All countries should be represented.** There is no reason to believe that secrecy jurisdictions 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.

6. **A universal UN tax body would be good for business**. 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". It is in the interest of business to avoid such fragmentation of tax standards and ensure that UN is leading global tax cooperation.