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ILLICIT FINANCIAL FLOWS: PERSPECTIVES FROM DEVELOPING ASIAN COUNTRIES

"Capital no longer flows to where it gets the best return but to where it can get the best tax subsidies, the deepest secrecy, and to where it can best evade the laws, rules and regulations it does not like."

- Nicholas Shaxson (2011)

INTRODUCTION

Globalisation has resulted in inextricably intertwined economies with a complex, integrated international financial system. The global financial crisis of 2008 unravelled the dangers of banking secrecy and offshore financial centres (OFCs)[1]. OFCs, also known as tax havens or low tax jurisdictions, often have extremely low tax rates and provide financial secrecy with the ability to sidestep financial regulations allowing rampant tax abuse and movement of funds or capital from one country to another, illicitly. A complex and sophisticated network of tax lawyers, bankers and accountants have effectively made it easier for corporations to illicitly hide their wealth and assets in tax havens from their respective national tax authorities.

Illicit financial flows (IFFs) include the cross-border movement of money that is illegally earned, transferred or utilised from activities like tax evasion, trade manipulation, organised crime and corruption; as well as wider aspects such as tax avoidance practices adopted by multi-national corporations (MNCs), which exploit loopholes in tax laws to avoid paying their fair share of taxes. Common to illicit financial flows is that they tend to be hidden by those carrying them out. While tax avoidance is often legally carried out, this practice abuses the spirit of tax laws even as it follows the letter of the law.

There is a negative correlation between human development and IFFs, i.e. countries with higher IFFs-GDP ratios tend to score low on the human development index.[2] Illicit financial flows undermine the socio-political and economic stability of a country. Moreover, they erode a country's tax base and are especially detrimental towards developing countries which most crucially need financing for development.

Goals 16 and 17 of the Sustainable Development Goals envision the role of IFFs (target 16.4) and domestic resource mobilisation (target 17.1) in building inclusive societies. Taxes, as an effective tool for domestic revenue collection and redistribution of resources, have figured high on the development agenda for developing countries to finance their development and in moving away from their dependence on foreign aid.[3]

AN OVERVIEW OF ASIAN DEVELOPING COUNTRIES

The very nature of illicit financial flows is elusive and covert, making it hard for governments to trace the origin of these funds. Global Financial Integrity (GFI), a Washington D.C. based think tank, estimates that Asian developing countries lost $482 billion to IFFs in 2013 alone, and over $3 trillion between 2004 and 2013.

Issues pertaining to taxation and financial transparency vary regionally. For instance,

[1] Christensen J. and Richard Murphy (2012). 'Tax Us If You Can'. Tax Justice Network. 2nd Edition.
[2] Spanjers J. and HakonFrede Foss (2015). 'Illicit Financial Flows and Development Indices: 2008-2012'. Global Financial Integrity.
[3] The effectiveness of aid depends on the absorptive capacity of macroeconomic policy decisions and institutions (Collier &Hoeffler, 2002). However, there is no consensus on aid-effectiveness in the international community.

many developing countries are coerced into lowering their corporate tax rates to attract Foreign Direct Investment (FDI), thus resulting in lower tax-GDP ratios. Countries also offer tax holidays, tax incentives or tax exemptions to corporates in order to create a seemingly conducive climate for FDI, thus resulting in aggressive regional tax competition. These practices, collectively referred to as the 'race to the bottom', have corrosive impacts on the domestic mobilisation of resources. In fact, the overall taxation rates in Asia at a regional scale are among the lowest in the world, below the tax levels in the European Union, the Americas, Africa and the Middle East.[4] A number of Asian countries also have high levels of dependence on indirect taxes – with the Value Added Tax (VAT) and Goods and Services Tax (GST) rates averaging at around 12.5 percent in the Asia-Pacific region[5] – which have been shown to disproportionately affect marginalised sections (the poor, women, and other minority groups) of the society.

Furthermore, revenue departments in developing countries are under-resourced and endure capacity constraints, which minimises scrutiny of dubious activities. A comparative analysis of revenue bodies by the Asian Development Bank highlighted countries like Cambodia, India, Indonesia, Myanmar, the Philippines, etc. have limited specialised resource personnel working in taxation departments, with respect to their population size.[6]

The briefing will delve in the modalities of IFFs, tax injustice and their impact on domestic mobilisation of resources in five specific developing Asian country contexts: Afghanistan, Bangladesh, China, India and the Philippines.

AFGHANISTAN

As a post-conflict country, Afghanistan has received more than $100 billion as Official Development Assistance (ODA) in the last decade.[7] Afghanistan's dependence on foreign aid has rendered the economy riddled with corruption.[8] Coupled with the lack of security and porous borders, the country also has functioning parallel informal structures of authority (tribal warlords or terrorist groups) in some regions. These structures have immense political control on economic activity and livelihoods.

With little trust in the formal banking system, the *Hawala* system (also called *Hundi* in other South Asian countries) emerged as the most convenient and reliable system for moving funds in and out of the country. *Hawala*, unlike any formal institution, is based on mutual trust and an extensive network of family and regional affiliations. Such a close knit community of money exchange dealers or *Hawaladars* provide a reliable, timely and cost-effective alternative to the traditional banking and financial establishments which are otherwise perceived as inadequate and corrupt.

Less than 10 percent of the economy depends on banking system for transfer of funds.[9] According to the Ministry of Finance however, 35 per cent of financial flows within the country are legal,[10] even though illegally generated funds are easily able to enter legitimate financial cycles. At present, over 90 percent of financial transactions in Afghanistan take place via the Hawala system, out of which only 20 percent are channelled through licensed *Hawaladars*.[11]

[4] Martinez-Vazquez, J., (2011).Taxation in Asia. Asian Development Bank
[5] KPMG International (2013). Asia Pacific Indirect Tax Country Guide
[6] Araki S. and Iris Claus (2014).'A Comparative Analysis of Tax Administration in Asia and the Pacific'. Philippines: Asian Development Bank
[7] Lutz C. and Sujaya Desai (2015). 'US Reconstruction Aid for Afghanistan: The Dollars and Sense'. Brown University, pp 1-18
[8] Samim M. (2016). Afghanistan's Addiction to Foreign Aid.The Diplomat. Available at: http://thediplomat.com/2016/05/afghanistans-addiction-to-foreign-aid/
[9] Integrity Watch Afghanistan (2015). 'Curbing Illicit Financial Flows in Afghanistan'
[10] Ministry of Finance (2015). Annual Performance Report
[11] To, IBID

Additionally, the financial flows in and out of the country linked to the drug trade and other illicit activities also occur via this informal channel. As the largest producer of opiate goods (includes heroine, morphine and other products) in the world, in the year 2008, the Afghan drug trafficking industry generated $1.4 billion from opium exports alone.[12] It offers a scrutiny free channel for money laundering which can be used to assist terrorist financing, illicit opiate industry and other criminal activities.

Tax Evasion

Tax-motivated IFFs are a major challenge faced by taxation authorities in Afghanistan. Crony capitalistic government institutions exempt the wealthiest citizens and businesses from their tax obligations. An investigation by the International Monetary Fund (IMF) assessing the state of severe financial crunch in 2013 concluded that inherent corruption and widespread smuggling abetted by government officials led to the theft of custom revenue.[13]

Weak implementation on part of state authorities in establishing reporting and controlling standards allows several industries like the telecommunication, extractive and logistics to misappropriate their revenues. Several instances of large scale misappropriation and under reporting of revenue across industries such as construction have been found, wherein the political elites consistently report no income. Similarly, the extractive industries from the regions of Badakshan to Nangarhar pay no royalties or taxes on mining activities for stones such as lapis and emeralds.[14]

Box 1: Tax Evasion by Foreign Companies

Afghanistan Investment Support Agency (AISA) probed an international logistics firm catering to American soldiers stationed in Afghanistan, which owed a total of $6 million to the Afghani government in taxes. The Audit report of Special Inspector General for Afghanistan Reconstruction concluded that almost "43 contractors expanding US government efforts in Afghanistan" were found guilty of tax evasion, where a combined penalty of $921 million was levied by the Afghan Ministry of Finance.[2]

Tax evasion by foreign companies in Afghanistan is often associated with the absence of information on operations and ownership. Though a total of 40,000 national and international companies are registered with the AISA, a large number of firms are still unaccounted for, and thus find it easy to evade taxes.

Notes:

1. According to the 2003 bilateral agreement between the Afghan government and the US provided the firms do not indulge in commercial activities, military and development related assistance, the firms are not obligated to pay taxes to Afghan revenue authorities.

2. Special Inspector General for Afghanistan Reconstruction (2013). Taxes: Afghan Government Has Levied Nearly a Billion Dollars in Business taxes on Contractors Supporting US Government Efforts in Afghanistan. Audit 13-8.https://www.sigar.mil/pdf/audits/2013-05-14-audit-13-8.pdf

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[12] UNODC (2008). 'Financial Flows linked to the Illicit Production and Trafficking of Afghan Opiates'. The Orange Paper (Part 1)

[13] Rosenberg, M. (2013). Afghan Government Faces Cash Crunch, I.M.F. Says. Nytimes.com. Available at: http://www.nytimes.com/2013/05/03/world/asia/afghan-government-faces-cash-crunch-imf-says.html

[14] Integrity Watch Afghanistan, 'Extractives for Sustainable Development' https://iwaweb.org/wp-content/uploads/2015/09/Policy-Brief-Extractives-for-sustainable-development-in-Afghanistan.pdf

Policy Considerations

The absence of adequate state structures has led to the misuse of political influence along with the emergence of provincial governors, which facilitates tax collection in their respective regions, increasing the risk of revenue loss.

- Unregulated *Hawaladars* should be brought under the ambit of the financial system to track informal transactions through the *Hawala* system and to curb tax evasion. It would also change the public discourse on the use of banking institutions.
- A publicly accessible 'beneficial owner'[15] registry would aid in establishing transparency standards for entities in Afghanistan. This registry should publish, but not be limited to, information on the natural persons, related parties, shareholders and stakeholders of legal entities (including companies, trusts or foundations).
- A registry with details on the account of payments made by a legal entity, the royalties and incentives received especially for contracts in the extractives sector and the licensing of assets offered to a legal entity to scrutinise any misreporting on revenues should also be maintained.[16]
- Furthermore, bringing transparency in foreign aid declarations by donors will discourage companies from escaping their tax obligations and report on activities.

BANGLADESH

Bangladesh, like most developing economies, has a low tax-GDP ratio of around 9.6 percent in 2015.[17] More than 80 percent of the country's revenue comes from taxation; however, only 30 percent of taxes are collected by way of direct taxes. The country also faces the steadily growing problem of revenue loss to IFFs over the years, and 'Swiss bank account' deposits for Bangladesh have nearly doubled between 2012 and 2014.[18]

Since 1976, the country has lost $24.7 billion to illicit financial flows.[19] Among Least Developed Countries, Bangladesh is estimated to be the largest contributor to IFFs, with an average annual outflow of $5.6 billion in the decade between 2004 and 2013, mainly attributed to trade mispricing, which represents 88 percent of these flows.[20]

Trade Misinvoicing and Mis-declaration

Trade misinvoicing, also a form of trade based money laundering, involves business entities distorting trade receipts by reporting either over or under-invoicing of transactions on intermediaries in a country to avoid taxes. In the fiscal year 2014-15, Bangladesh recorded a historical growth of 54.5 percent in import shipment figures in a single month. The capital machinery imports recorded in March 2014 were $731 million, five times the amount of import in March 2013.[21] According to the information retrieved from the Bangladesh Bank, "a number of crane items imported from

[15] A 'beneficial owner' can be defined as the natural person or the true human owner who directly or indirectly owns or exercises substantial control over a company, trust or foundation or receives substantial economic benefits from that entity. See for a wider definition, European Parliament, Anti-Money Laundering Directive – IV.

[16] Integrity Watch Afghanistan (2015). 'Curbing Illicit Financial Flows in Afghanistan'

[17] See: http://www.reuters.com/article/economy-bangladesh-worldbank-idUSL3N1444QM20151215

[18] Byron R. K., Md Fazlur Rahman. (2016). Deposits of Bangladeshis at Swiss Banks $55 million. Asia News Network http://www.asianews.network/content/deposits-bangladeshis-swiss-banks-55-million-21395

[19] Equity BD (2015). 'Illicit Money Flies of Bangladesh'. http://www.equitybd.net/wp-content/uploads/2015/10/Illicit-Money-Flies-off-Bangladesh.pdf

[20] Kar D. and Joseph Spanjers (2015). 'Illicit Financial Flows from Developing Countries: 2004-2013'. Global Financial Integrity

[21] Alo J N. (2014). Capital Machinery Import Rises 17% in FY 14'. Dhaka Tribune http://archive.dhakatribune.com/business/2014/aug/07/capital-machinery-import-rises-17-fy14

France in the month of March 2014", amounting to a figure of $433 million.[22] A 2 percent customs duty was levied on the crane products; while no customs duty was imposed on aircraft. In 2015, prices of capital machineries were also found to be inflated. In an example of over-invoicing, from 2013-2015, average import price of rice was found to be $800-1000 per tonne whereas the international market prices of the same were about $500 per tonne.

Policy Initiatives

The Money Laundering Prevention Act of 2012,[23] closely aligned to the recommendations by the Financial Action Task Force (FATF), is aimed at fighting money laundering, terrorist financing and other related threats to the integrity of the international financial system. The country's National Board of Revenue (NBR) is set to form a separate cell to gather information on siphoned funds and scrutinise the income of dual citizens. The prime objective of this cell would be 'tax recovery' and not 'asset recovery' due to the difficulties associated with the latter.

A National Strategy for preventing money laundering and terrorist financing has also been enacted with the view to supplement the Money Laundering Prevention Act. It aims to tackle terror financing and money laundering through a risk based approach of monitoring and supervision of all reporting organisations with a special focus on new reporting agencies like non-governmental / not-for-profit organisations (NGO/NPO) and Designated Non-Financial Businesses and Professions (DNFBPS). With the assistance of the Bangladesh Financial Intelligence Unit, identifying and analysing emerging cases of money laundering and terror financing including cases arising from the use of new technology will become easier. The strategy on a broader note focuses on developing a transparent, accountable and inclusive financial system in Bangladesh by boosting national and international coordination at policy and operational levels.

Policy Considerations

- There is a need for greater coordination between NBR and the Anti-Corruption Commission (ACC) to limit cross-border tax evasion and address trade-based money laundering by MNCs. The ACC also needs a separate wing to keep up with domestic tax dodging in real estate transactions, gold smuggling and illegal capital flows.
- Technological capacity advancement and modernisation of Border Control Mechanisms should focus on depriving perpetrators from the use of proceeds of crime to prevent smuggling of gold and drugs, human trafficking and other transnational organised crimes.

CHINA

Before the 1978 pro-market reforms, the People's Republic of China was a centrally planned and isolated economy with state controlled banking structures. The liberalisation reforms transformed the taxation system as the private sector aligned itself with foreign investment inflow. Meanwhile, the urban-rural inequality gaps worsened from mid-80s, the 1978 reforms also opened avenues to institutional corruption as regulatory policies weakened. Stagnant incomes of public officials and high inflation rates from 1980s steered many towards corrupt practices inculcating huge public mistrust towards government institutions.

In 1997, China outlined regulations in its criminal law to tackle money laundering.

[22] Centre for Policy Dialogue (2014). 'State of the Bangladesh Economy in Fiscal Year 2014'. pp 1-69. http://cpd.org.bd/wp-content/uploads/2014/06/Centre-for-Policy-Dialogue-IRBD-FY14-Third-Reading-Full-Study.pdf

[23] Bangladesh Gazette (2012), Additional Volume, Registered Volume- DA1 http://www.satp.org/satporgtp/countries/bangladesh/document/papers/Money_Laundering_Prevention_Act_2012.pdf

Government officials are known to smuggle their illegally earned money to the tax havens of Hong Kong, Macau and Taiwan and other countries like Finland. By establishing fake companies, around $7.2 billion in 2014-15 was moved from main land China to Hong Kong and other regions like Shenzhen.[24]

Anti-Money Laundering Regulations

In a bid to dodge capital controls, both businesses and individuals choose to move funds offshore. According to the People's Bank of China (PBC), underground banks in China have transactions worth $125 million or more annually.[25] Illicit financial outflows in China are mainly credited to the lack of access to information as a consequence of widespread corruption, tax base erosion and profit shifting by MNCs and money laundering. Political corruption in China is closely related to money laundering.

Allowing international scrutiny and follow ups from the FATF and Eurasian Anti-Money Laundering and Counter-Terrorism Financing Organization (EAG), the PBC implemented domestic reforms and new risk assessment standards. Consequently, the PBC bilaterally has also negotiated with countries and signed anti-money laundering supervision memorandum.

In cases of tax avoidance by MNCs, the legislative central authorities intervene on investigation without the involvement of local governments. Widespread local tax competition to attract investment in respective regions between foreign and domestic companies is evident from the cases where investment companies were exempted from tax payments for the first three years and were obligated to pay only 50 percent of the tax rate till the seventh year of operation. Since 2008, the nature of these tax incentives has been changed to providing free factories, sufficient labour etc.

Box 2: Alternative Banking Routes

Fei ch'ien, or the underground private banking system, requires no identification to exchange funds and provides complete opacity on the source of funds and can be established without requiring any proper authorisation. While a very significant change in China's tax policy was the centralisation of taxes which prevented local governments from collecting them, alternative remittance systems operate illegally as private underground banking channels in China. More than $152 billion worth of underground banking transactions were detected in 2015.[1] A task force launched by the Ministry of Public Security comprising of the Central Bank, Foreign Exchange Regulator and other agencies unearthed $30 billion in illegal transfers.[2]

Notes:

1. Reuters. (2016). China underground banks did $150 bln in transactions in 2015: regulator

2. Reuters. (2016). China police crackdown on $30 billion in underground banking

Policy Considerations

- Due to weak monitoring and safety regulations, there is a need to strengthen the implementation of the anti-money laundering regulatory framework on securities trading and emerging industries. This would counter sectors including emerging sectors involved in money laundering practices.
- Government institutions working on illicit

[24] Indian Express (2016). China's Guandong province busts underground banks that handled $35 bln, say state media reports
[25] Yap, C. (2015). In China's Alleyways, Underground Banks Move Money. Wall Street Journal

outflow of finances and capital flight to offshore financial centres need more policy coherence by establishing a systematic database, along with raising public awareness of profit shifting. Information sharing by respective departments will invite more scrutiny on money laundering activities from various stakeholders.

INDIA

In India's scenario, assets or income generated that go unreported to the legal authorities make up the 'black economy'.[26] According to some estimates, the black economy is as large as almost 62 percent of India's GDP.[27] Unaccounted money held in the form of foreign and domestic assets like estate, jewellery, is transferred and/or utilised using shell companies.[28] The generation of black money is systemic and can occur via different sources, for example, through legally permissible tax avoidance and evasion by MNCs or other illegal activities like drug trafficking, terrorist financing, corruption, crime etc.

As a three tier economy, over 80 percent of India's workforce[29] (as of 2011-12) belongs to the informal sector with precarious livelihoods that do not fall under taxable income brackets. Tax revenue collection in India, like in many developing countries, has moved to depend even more on indirect taxes. Moreover, the direct-indirect tax ratio has been recorded at a decade low; and corporate tax collected has gradually declined from 39.19 percent in 2009-2010 to 30.29 percent in 2016-17 of the total taxes collected.[30] In the year 2014, in cases where tax incentives were allocated, nearly 52,911 companies paid no taxes on profits incurred,[31] losing out on key revenue resources.

Both international and national corruption, money-laundering scandals and data leaks like the Panama Papers, Commonwealth Games scam and the Mobile 2G Spectrum Scam have exposed the high level involvement of political and affluent figures alike. Such scandals shed a deeper light into India's limited fiscal space and inadequate financing of social sectors in the light of growing income and wealth inequality.

Round Tripping

Illicit capital held in offshore financial centres is rerouted to India in the form of foreign direct investment, referred to as 'round tripping'. The Department of Industrial Policy and Promotion released statistics where the inflows from Mauritius (widely considered a tax haven) to India, from April 2000 to March 2011, was recorded to be 41.80 percent of the entire FDI received by India in that decade.[32] Between 2011 and 2015, 51 percent of the FDI inflow was routed from Singapore and Mauritius. The opaque corporate structures in secrecy jurisdictions conceal the real beneficiary, opening up avenues of misuse.

Transfer Mispricing

Approximately 70 percent of all world trade carried out by MNCs occurs between related companies or subsidiaries. The cost related to such transactions between related entities is known as the transfer price. These costs associated with the product or service provided by one subsidiary to another, may vary from the real market price of the transaction between two independent entities – this practice is known as transfer mispricing. This allows corporations to shift profits accrued from regions where they operate to a low tax jurisdiction, thereby avoiding taxes across

[26] Ministry of Finance (2012), 'The White Paper on Black Money', Central Board of Direct Taxes. Pp 1-96.

[27] The Caravan (2016).The Economist Arun Kumar on Demonetisation and Black Money Generation

[28] Globally, a shell company or corporation is one without active business operations or significant assets. Although all shell companies are not illegal, they are often used illegitimately to disguise business ownership from law enforcement agencies or the public.

[29] International Labour Organisation (2016), India Labour Market Update. More information at: http://www.ilo.org/wcmsp5/groups/public/—asia/—ro-bangkok/—sro-new_delhi/documents/publication/wcms_496510.pdf

[30] The Hindu (2016).Budget 2016: Where the money comes and where it goes

[31] Ghosh J. (2016). The Indirect Benefits Transfer. The Hindu

[32] To, IBID. http://www.finmin.nic.in/reports/WhitePaper_BackMoney2012.pdf

jurisdictions. Mispricing on services especially goes undetected. The Indian Transfer Pricing regulations defined in the Income Tax Act, 1961, state that this price should be calculated at the 'arm's length principle'.[33] Further in this regard, India has revised its Double Taxation Avoidance Agreement (DTAA) with some countries like Mauritius, Cyprus, Singapore and others.

Permanent Establishment

Source-based taxation as a policy allows a country to tax MNCs creating real economic activity or value in their jurisdiction without permanent establishment in the country. A primary concern for state authorities has been taxing companies providing services with 'virtual presence 'in the source country. An 'Equalisation Levy' at 6 percent was introduced in 2016 by the Ministry of Finance to tax such companies. Keeping in line with the source based taxation policy, the agreement has also focused on expanding the scope of 'permanent establishment' provisions. Timely exchange of information across jurisdictions will enhance efforts in combatting tax evasion by MNCs.

Policy Considerations

- Progressive taxation is essential to lowering the high wealth and income inequality gaps. Reviving the inheritance tax and wealth tax would be the least distortionary fiscal measure taken to bridge these gaps. The wealth tax should also bring both productive and non-productive assets under its ambit.[34]
- India has introduced a provision for creating a registry of beneficial owners (or 'true human owners') of companies registered in India, in the Companies (Amendment) Bill, 2016. According to this bill, all companies will be required to file a return of their 'significant beneficial owners' who own 25 percent of shares with the Registrar of Companies. This registry of beneficial owners should be made publicly available and the current threshold of 25 percent ownership of shares in a company to be recognised as a beneficial owner needs to be lowered to 10 percent.[35]

THE PHILIPPINES

Illicit outflows from the Philippine economy have grown from around 2 percent of GDP in the 1970s and 1980s, to about 5 percent of GDP in the 2000s.The Philippines has a tax-GDP ratio of 16.2 percent.[36] The marginal increase in the country's tax-GDP ratio has been due to a rise in indirect taxes. As tariffs on international trade contribute up to 22 percent of total taxes in the Philippines, extensive under-invoicing has a severe damaging effect on government revenues.

The rise in IFFs has been consistent with trade liberalisation laws in the Philippines:

- Foreign Investment Act (1991), allows greater foreign participation in previously restricted areas
- Omnibus Investment Code (1987) mandates incentives and guarantees for investments in the country. By 2010, almost 140 different laws offer tax incentives to various investment portfolios
- The Foreign Bank Liberalisation Act allows the establishment of foreign banks in Philippines, with virtually no control on offshore operations. Private sector investment increased after the removal of controls in the Special Economic Zone Act of 1995

Trade Liberalisation

Philippines adopted the Structural Adjustment

[33] Arm's length principle means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions. More information at: http://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx
[34] More information at: https://thewire.in/21645/the-case-for-reintroducing-inheritance-tax/
[35] CBGA (2017). 'What do the numbers tell? An Analysis of Union Budget 2017-18'
[36] Manila Bulletin (2015).PH tax-to-GDP ratio on the rise- OECD.

Programmes in the 1980s, marking a shift in the trade policy by lowering tariffs and relaxing import restrictions. As reported by the Philippines Bureau of Internal Revenue (BIR) and the Bureau of Customs, the aggregate revenue collections have fallen short of targets. Tax incentive policies in the year 2009, resulted in revenue loss of PhP 80 billion.[37] The losses incurred from the commitments to the Free Trade Agreements (FTAs) have not been taken in account. FTAs with Australia, New Zealand and India too have caused losses in public revenue of around $195.65 million for Philippines.

Of the 127 revenue-related executive orders from 1998-2009, 119 were to do with duty free importation or tariffs reduction, in compliance with the terms of FTAs entered in to by the Philippines. In case of Philippines the poorest 20 percent of Filipinos own less than 5 percent of country's total income. The Philippines have close to 211 special laws that provide tax incentives and 14 Investment Promotion Agencies (IPAs).

Tax Incentives Management and Transparency Act

The Tax Incentives Management and Transparency Act (TIMTA), enacted in 2015, aims at promoting greater transparency and accountability in the grant and administration of tax incentives to business entities, individuals, and corporations.

However, TIMTA has its own constraints:

- It does not limit the amount of incentives that IPAs may get, nor will it prevent, deter or delay the promotion and regulation of investments, processing of applications of registration, and evaluation of entitlement of incentives by these agencies.
- The General Appropriation Act (GAA) does not account for tax incentives granted to private entities and businesses but only includes the tax incentives issued to state owned or controlled corporations. Since there is no Tax Expenditure Account in the GAA, tax incentives to private entities and businesses go unrecorded and thereby, under- reported.[38]
- Finally, IPAs are no longer required to submit applications for tax incentives to the BIR for validation and modification.

Statutory Hurdles to Financial Transparency

Bank deposits in the Philippines are considered confidential in nature, written with the consent of the depositor, except in cases of impeachment, upon the order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation. While the Anti-Money Laundering Act (2001) allows inquiry or examination of bank deposits or investments when probable cause of money laundering has been established in court, this information however cannot be used by taxation authorities, as tax evasion is not a predicated crime.

CONCLUDING REMARKS

The current international institutional architecture is skewed in favour of the rich, developed countries and ignores the needs of the developing countries. Some crucial policy recommendations in this context are as follows:

- In order to challenge financial secrecy and establish transparency standards, countries should publish a publicly accessible registry of beneficial owner(s) consisting of ownership information on all legal entities i.e. companies, trusts and foundations. The registry should list the true human owners who are directly or indirectly driving benefits from the legal entity they own or control.

[37] NTRC (2011), Tax Performance Analysis of the BIR and BOC: 1998-2009http://www.ntrc.gov.ph/images/journal/j20110506a.pdf

[38] Sixteenth Congress (2013) http://www.congress.gov.ph/legisdocs/basic_16/HB02492.pdf

- Developing countries lose essential domestic revenue as a result of tax incentives offered to businesses in order to bring more investment in the country. Governments nationally should develop mechanisms to re-evaluate the current tax incentives offered to corporates and maintain a system of checks and balances to curb any such abuse of tax incentives due to legal loopholes.
- Countries in the Asia-Pacific should collectively endeavour to eliminate tax competition between each other, thus checking the race to the bottom.
- On setting a regional agenda on issues of international taxation, countries in the Asia-Pacific should strive to establish an independent, representative and well-resourced forum for regional cooperation on international taxation.
- Due to the uneven allocation of taxation rights towards developing countries, there is a need of a democratic and inclusive platform where developing countries can debate and discuss tax norms that directly affect them. In this light, an intergovernmental global tax body under the auspices of UN should be established as a step towards reforming the international financial system.

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This policy brief has greatly benefited from presentations made by Sayed Ikram Afzali (Integrity Watch Afghanistan, Afghanistan), Towfiqul Islam Khan (Centre for Policy Dialogue, Bangladesh), Ming Zhuang (Participation Centre, China) and Mae Buenaventura (APMDD, Philippines) at the conference on 'International Taxation and Regional Cooperation: Challenges and Opportunities for Asia' held on March 29-30, 2016 organised by Centre for Budget and Governance Accountability and the Financial Transparency Coalition.

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