First G20 Meeting of Finance Ministers and Central Bank Governors - Sharing Best Practices on Tax Transparency

Policy Submission to Department of Economic Affairs

(February 12, 2018)

CBGA

Centre for Budget and Governance Accountability

(www.cbgaindia.org)

Subject: Sharing a few best practices on tax transparency measures and cooperation on international tax matters ahead of the First G20 Meeting of Finance Ministers and Central Bank Governors (March 19-20, 2018 | Buenos Aires, Argentina)

We are encouraged to see the crucial role played by Government of India (GoI) in furthering tax transparency in the global financial system through international platforms such as the United Nations (UN), G20 and the Organisation for Economic Cooperation and Development (OECD). We also congratulate GoI's leadership with regard to India becoming one of the early adopters of the Automatic Exchange of Information (AEoI) and Base Erosion and Profit Shifting (BEPS) standards to address tax evasion, and welcome India's support for an intergovernmental tax body under the auspices of the UN.

The issue of illicit financial flows (IFFs)[1] is urgent and complex, that concerns authorities across the world. Curtailing IFFs is central to domestic resource mobilisation, as IFFs severely undermine national efforts to raise revenue to invest in social security, finance development and secure human rights.

Developing countries continue to lose revenue to tax dodging by multi-national corporations (MNCs) and the elite, crime, corruption and money laundering. In 2015 alone, developing countries lost approximately $1 trillion to IFFs.[2] Countries across the world also bear tax losses of about $500 billion to artificial profit shifting by MNCs each year – of which India alone loses about $41.17 billion to such practices annually.[3]

With reference to the First G20 Finance Ministers and Central Bank Governors Meeting on March 19-20, 2018 in Buenos Aires, we are writing to you to highlight some of the policy asks to strengthen tax transparency, and tackle money laundering and corruption:

<u>Automatic Exchange of Tax Information</u>

1. Collecting information on residents from all jurisdictions:

There is a necessity to collect information on residents from all jurisdictions and share it with adjudicating authorities, rather than to do it only for jurisdictions that have adopted the AEoI framework. The benefits in adopting this approach are:

i. For simplicity: Financial institutions treat all account holders in the same way, and all information is passed onto tax authorities. The authorities do not need to keep updating lists, guidelines and legislations to require information from residents of new countries to be collected and/or submitted.
ii. Simplifies the integration of new countries: If all necessary information is already collected, integrating new countries into the AEoI standard will be easier, with data available immediately.
iii. It will enable research and analysis to be done on the size, composition and changes in the offshore financial markets. The data currently available on offshore assets is significantly scanty.

2. Collating and publishing aggregate statistics:

There is a lack of high quality data on the size and composition of the offshore financial markets. As a result, estimates on the size of offshore assets in secrecy jurisdictions and tax havens range between $21 and $32

[1] Illicit financial flows (or IFFs) are cross-border movement funds generated through a range of activities including tax evasion, misappropriation of state assets, laundering proceeds of crime as well as profit shifting by multi-national corporations by abuse of domestic tax laws, bilateral tax treaties and trade and investment agreements. Common to illicit flows is that they tend to be aided by financial secrecy.
[2] Global Financial Integrity, 2017
[3] UNU-Wider, 2017

trillion. There is a need to improve statistics and enable better research. If information is collected for all account holders, the data would be available for authorities to aggregate it into "totals" by country of residence, without identifying any individual or entity account holder (and so would not cause any concern over confidentiality), but would be able to show, for example, the size of assets and number of accounts held by residents from each jurisdiction in the world.

Country-by-Country Reporting by MNCs

The BEPS Action 13 mandates MNCs with an annual consolidated revenue of 750 million euros (roughly Rs. 5,500 crores) to provide details regarding revenue, profit and loss before tax, tax paid, stated capital, number of employees and tangible assets on a country-by-country basis to their respective tax authorities.

With this threshold in place, only 45-47 Indian companies or subsidiaries of MNCs located in India would be required to report their data on a country-by-country, disaggregated basis. We would therefore request you to consider lowering the national threshold at which companies would be required to report their data on a country-by-country basis in India, so as to include more companies in the net.

Beneficial Ownership of Companies

One of the most common ways in which companies obscure ownership is by appointing representatives, nominees, proxies or agents to represent the beneficial owner (BO)[4], while hiding the true BO's identity. These proxies are persons in charge of a company only on paper and not in practice, therefore making it crucial to establish public registries of beneficial owners. It is also important to identify the true BO through means other than shareholding ownership.

There is a need to lower the current threshold of twenty-five per cent ownership of shares in a company to be recognized as a beneficial owner, as laid out in the Companies (Amendment) Act, 2017. An individual wishing to remain anonymous would only need to appoint three individuals to represent themselves as BOs of a company to dilute their stated ownership interest to twenty per cent, or lesser. The presence of a twenty-five per cent threshold is vulnerable to abuse and should be lowered to ten per cent.

Further, the Companies (Amendment) Act, 2017 states:

"The Central Government may prescribe a class or classes of persons who shall not be required to make declaration (of their beneficial owners)" under sub-section 90(1). This clause negatively impacts the aim of the policy measure of identifying beneficial owners of companies.

A central register of beneficial owners should be available publicly, to further increase transparency on corporate ownership. The United Kingdom, Denmark and Slovakia have implemented a central register of beneficial owners which is publicly accessible; while Afghanistan, Argentina, Australia, Austria, France, Israel, Jamaica, Netherlands and Ukraine have committed to the same.

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[4] "Beneficial owner' is defined as any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means." (European Parliament, Anti-Money Laundering Directive- IV).

Reforming the International Institutional Architecture on Finance

International tax norms are currently designed by the OECD and the G20, as well as some lesser known bodies such as the Financial Action Task Force (FATF), Bank of International Settlements (BIS), Basel Committee on Banking Supervision (BCBS), Financial Stability Board (FSB), International Accounting Standards Board (IASB) and International Organization of Securities Commission (IOCSO). While these bodies may appear to be a diverse group of institutions focusing on different aspects of international tax, they form a close web and are inter-linked through funding agreements and reciprocal membership.

The membership of these international bodies most often comprises of rich, developed countries from the Global North; and the secretariat or headquarters of these norm-shaping bodies is located in the Global North as well. Most developing countries, especially low income countries, are not members of such institutions and therefore do not have the policy space to shape international tax standards that affect them directly. The norms designed by these exclusive institutions thus run the risk of benefiting developed countries, often at the expense of developing nations which are expected to implement these norms without enough scrutiny and contextualization.

We would therefore request that the G20 countries support the establishment of a well-resourced, intergovernmental tax body under the auspices of the United Nations, to achieve a neutral, democratic and inclusive platform for shaping norms of taxation and promoting international tax cooperation.

The then Minister of State for Finance, Mr. Jayant Sinha stated at the Third International Conference on Financing for Development (FfD) in July 2015:

“In today’s interconnected world, tax policy is a global public interest, having ramifications far beyond national borders. Greater information exchange is good, but not a substitute for genuine and equitable multilateralism in deciding global norms and standards on taxation. If this is truly a universal agenda, then all of us must have an equal seat at the table to legislate on global issues. The lack of an ambitious decision on upgrading the UN Committee of Experts on international cooperation on tax matters into an intergovernmental body, in our view, is a historic missed opportunity.”

(For further information on these issues, please contact us at director@cbgaindia.org or neeti@cbgaindia.org or at 011-4920 0400 / 401 / 402).

Copy to:

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