Introduction

Christian Aid and Action Aid have been working on issues of tax justice and development with our partners around the world for nearly 10 years, and so while we understand that this questionnaire is targeted at countries, we hope that the UN Tax Committee will appreciate this civil society input in its valuable work in the BEPS project.

Overall our concern is that while some of the main issues being faced by developing countries are in the BEPS acS acS acSwhich several developing

countries have recently expressed support[i] discussions appear to have paid scant attention to the need to ensure that the CbC report is actually available to developing countries. Similarly the consultation on Treaty Abuse did not seek to meaningfully engage in the challenges developing countries face as regards treaty negotiation and renegotiation (i.e. source-residence split, withholding taxes, ease of implementation, power imbalances)[ii].

Overall the lack of full and equal inclusion of developing countries in the BEPS process, and the lack of a clear commitment to assessing the impact of proposed BEPS project actions on developing countries, as recommended by the OECD, UN, IMF and World Bank in their report to the 2011 G20[iii], appears to be leading to a BEPS process that will not provide the adequate consideration of and solutions to developing countries’

OECD/G20. The UN for example would be a much more legitimate and representative forum in which to have discussions on the reform of global tax rules.

Notwithstanding that proviso, within the BEPS process there are concerns that many of the approaches may not be effective/appropriate for developing countries. For example the discussion draft on Treaty Abuse proposes more technical anti-abuse clauses that are likely to be complicated to apply, and so unlikely to be effective in many developing countries. Similarly the challenges that many developing countries have in both reforming domestic legislation and in avoiding being taken advantage of in unequal international negotiations mean there are challenges where solutions proposed as part of the BEPS project relies significantly on bilateral treaties and extensive new domestic legislation. While there is much talk of capacity building to develop and support revenue authorities in developing countries there is not the matching funding committed (the UK for example averages around £20m a year on capacity building

However, low-income countries' revenues are often harmed not only by treaty abuse/shopping, but by normal treaty 'use' where capital and income flows between treaty partners are predominantly in one direction. Given the absence of conclusive evidence that such revenue sacrifices do indeed deliver investment, jobs or growth for low-income countries, initiatives to tackle treaty abuse should not just update inadequate anti-abuse protections of old treaties, but address the balance between source and residence taxing rights.

Capital gains tax appears to be a further area of concern. Some treaties[xxiii] contain articles reservimg all c Q q38.24 cmo

In an effort to attract FDI, many countries are engaging in a race to the bottom through the granting of tax incentives without a proper cost/benefit analysis and in a non-transparent manner. The OECD has found that for six African countries tax incentives (i.e. potential tax revenue foregone) represented 33 per cent of their total tax collection. For India in 2011 revenue lost due to tax incentives to attract FDI amounted to 5.7 per cent of GDP in the financial year 2012-13[xxiv]. In Colombia, the government lowered mining royalties from 6 to 1 per cent in 2006. The cost of this exemption awarded to one single extractive company exceeded Colombia's total spending on health infrastructure[xxv]. Action Aid have estimated that tax incentives may be costing developing countries $138bn a year[xxvi]

As a recent briefing from African Tax A

The combination of treaty limitations and low-tax domestic environments for mobile income in 'treaty havens', including within the EU, may thus be an invitation to base-eroding payments from lower- income countries; an incentive for manipulating returns to intangible assets; and also a wider disincentive to multinational businesses locating higher-value functions like management and research/development in developing countries themselves, denying them the economic development benefits that such functions can bring.

Negative spillovers caused by imbalanced tax treaties are not just confined to older or outdated treaties. Many newly-signed treaties signed by low- and lower-middle-income countries are often equally imbalanced. Several treaties recently signed between Mauritius and other African countries, for example, contain a capital gains article reserving all capital gains taxation to the state of the investor's residence, while Mauritian tax rules effectively exempt Mauritian investment companies from capital gains tax[xxix]. These recent treaties seem likely to

disallowing the deduction of fees paid to the Swiss registered company. The proposed deduction limitation would be triggered by the lower tax rate enjoyed by the subsidiary company, thus stopping profits from being moved.

- A process that reduces the opportunity for power imbalances to influence outcomes

- Explore the feasibility of deduction limitations as a policy measure to counteract BEPS based on feasibility of enforcement for developing countries.
- Include developing countries in negotiations such as the BEPS project as equal partners already from the outset of the project to ensure that their interests are accommodated within any final agreements.

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[i] Comments made at the Tax and Development Taskforce in Paris March 2014

[ii] See submissions by Christian Aid to Treaty Abuse consultation http://www.oecd.org/tax/treaties/comments-action-6-prevent-treaty-abuse.pdf (pp 119-123)

[iii] See Supporting the Development of More Effective Tax Systems: A Report to the G20 Development Working Group by the IMF, OECD, UN and World Bank - http://www.oecd.org/ctp/48993634.pdf pp27-28

[iv] See http://www.christianaid.org.uk/images/policy-brief-g20-fixing-the-cracks-in-tax.pdf

[v] http://www.theguardian.com/commentisfree/2008/nov/27/comment-aid-development-tax-havens

[vi] http://www.christianaid.org.uk/images/deathandtaxes.pdf

[vii] http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/transfer_pricing_dev_countries.pdf - this report prepared for the EC by pwc in its high impact scenario shows how the potential gains to developing countries can be over 40% of revenues from TNCs.

[viii] http://www.bloomberg.com/news/2012-11-25/zambia-says-