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Input from the European Network on Debt and Development (Eurodad) to the consultation regarding the forthcoming thematic report to the 26th session of the Human Rights Council on the human rights impact of fiscal and tax policy.

Eurodad welcomes this initiative by the Special Rapporteur on Extreme Poverty and Human Rights as well as the opportunity to provide written input to the process. Please find below the key points that Eurodad would like to emphasize.

Fiscal and tax policies have strong impacts on human rights, both at the national and international level

The protection of human rights requires availability of public funds to ensure the essential institutions and services that are a precondition for enjoyment of human rights. For example, the right to education requires a functioning education system, the right to life and health requires a functioning healthcare system, and the protection of civil and political rights require functioning public institutions and regulations that to uphold these rights.

If the state is supposed to play its role as duty-bearer for the progressive realization and protection of human rights, it needs to have the necessary financial resources, most of which need to come from taxation. In many countries, this is not the case and availability of public funds and tax income is a major constraint to the protection of human rights.

However, in today's globalized economy, the availability of public funds in a given country is not only a result of the fiscal and tax policies applied that country but also of international and bilateral agreements between nations. Furthermore, the ability of countries to collect taxes and thereby generate public funds can be directly undermined by the policies of other countries, in particular as regards the extent of financial transparency, as well as the tax rates and policies for multinational corporations.

Tax evasion and avoidance by multinational corporations have strong negative impacts on the availability of public funds

According to estimates by the Global Financial Integrity, developing countries lose between US$ 850-1,100 billion each year due to illicit financial flows, mainly in the form of tax evasion by multilateral corporations.[i] When it comes to Africa, the

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estimates say that between US$597 billion and US$ 1.4 trillion were lost over the period 1980-2009. 60-65% of these illicit flows were caused by commercial tax evasion', in other words by illegal tax dodging by corporations. The remaining illicit flows were caused by other types of criminal activity (30-35%) and corruption (3%). As a result of these illicit financial flows, Africa has lost higher amounts of resources than was received in the period 1980-2009, and thus Africa has in fact been a net creditor to the world.[ii]

In addition to the illegal 'tax evasion', many corporations also engage in 'tax avoidance', which means circumventing national tax regulations in ways that are not illegal (at least for the time being), but exploits loopholes in the national and international tax regulation to reduce or completely avoid taxation.

From a human rights perspective, both tax evasion and avoidance are very damaging to the availability of public resources and thus to the fulfilment and protection of human rights.

In a globalized economy, the legislative framework of one country can undermine the tax system of other countries

Tax avoidance and evasion are facilitated by states and jurisdictions offering financial secrecy, such as banking secrecy and possibilities of establishing companies and other legal structures with secret ownership, which make it possible for multinational corporations and wealthy individuals to hide large amounts of financial resources and financial transactions from government authorities in other countries.

Another form of circumvention of national tax laws is the practice of multinational companies to obtain very low or no corporate tax rates in countries and jurisdictions even if the economic activity that was due to be taxed took place in another country. The so-called 'profit shifting' means that corporations declare profits in a low tax-jurisdiction rather in than in the country where the profits have been made. In order to shift their profits to low-tax jurisdictions, companies exploit different types of legislative loopholes, such as tax exemptions on trading between parent companies and subsidiaries or bilateral treaties established to avoid double taxation.[iii]

Tax avoidance and evasion are a growing concern for governments. One recent initiative is the Group of 20's request to the OECD to host international negotiations aiming to develop a model for automatic exchange of tax information of tax among governments, and tools to prevent base erosion and profit shifting. Due to the membership structure of the OECD, developing countries that are not part of the G20 will be unable to participate on an equal footing in these processes. Therefore, there is currently no international forum for countries to negotiate tax and transparency as equals, despite the fact that taxation is a key area of national interest for all countries.

The OECD, in its current setup, can be an important provider of technical input to international negotiations, but is not the appropriate body to host such international processes relating to tax and financial transparency.
Eurodad recommends that <u>a new intergovernmental body be established under the auspices of the United Nations with the mandate to negotiate an international</u>

agreement on tax and financial transparency. Several governments have previously voiced support for such a body, including the Group of 77 and China.

Not awaiting the finalization of international negotiations, governments must act urgently to remove the structures and regulations that facilitate and incentivize tax avoidance and evasion by multinational corporations. Eurodad recommends that:

- Governments perform thorough human right impact assessments of their domestic fiscal and tax policies, including policies regulating financial transparency and taxation of multinational corporations. As a core part of these assessments, a spill-over analysis of the effects on other countries, including developing countries, must be carried out.
- In order to ensure corporate accountability, governments must promote and urgently improve financial transparency, including by requiring country-by-country reporting for all larger corporations[iv] and setting up public registries of beneficial owners of corporations, trusts, foundations and similar legal structures.

Wrongly designed tax policies can have direct negative impacts on the poor

Poverty undermines the ability of individuals to enjoy human rights, including the right to food, water, sanitation and health, and ultimately the right to life. Since certain taxes, such as some types of consumption taxes, are charged directly to poor people (consuming the good subject to these consumption taxes), they act to reduce the purchasing power of the poor as well as their availability of financial resources, and thus their possibilities of enjoying human rights.

For this reason, Eurodad recommends that governments carry out an assessment to identify all domestic tax policies with negative impacts on the poor, as well as reform such tax policies to ensure that they promote and do not constrain the possibilities of citizens to enjoy their human rights.

Furthermore, Eurodad recommends an assessment of the human rights impacts of tax related technical assistance, advice and conditionalities of the international finance institutions, including the International Monetary Fund (IMF), with a view to ensuring that these institutions do not promote tax policies with negative impacts on the world's poor.

Contact information

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[i]Global Financial Integrity (2012): Illicit Financial Flows From Developing Countries: 2001-2010
[ii] Global Financial Integrity (2012): Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980-2009
[iii]For more information on the laws and regulations driving tax avoidance and evasion, see Eurodad (2013): Secret Structures, Hidden Crimes.
[iv]In the EU, country-by-Country reporting was introduced for the financial sector (but not for other sectors) in 2013 as part of the Capital Requirements Directive (article 89) .