Task Force Financial Integrity & Economic Development

CBGA

South Asia Regional Conference Report

Financial Transparency: Challenges and Opportunities for Developing Countries

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INTRODUCTION

The Task Force on Financial Integrity and Economic Development (Task Force) held its first regional conference in partnership with Centre for Budget and Governance Accountability (CBGA) in New Delhi, India on 3 April, 2013. The conference was attended by close to 90 participants (Annex 1- Participants List), including members of the Asia network of allied organizations from Indonesia, Bangladesh, Afghanistan, Nepal, Pakistan and South Korea. The goal of the conference was to increase the visibility of the Task Force in the region, have the opportunity to exchange information and ideas with local audiences, strengthen its regional network and provide network members with financial transparency advocacy tools.

The morning sessions of the conference, '*Curtailing the Laundering of the Proceeds of Crime and Corruption'* and 'How *to make it Harder for Multinational Businesses to Dodge Paying Tax',* were framed around the Task Force recommendations and panelists were made up of both Task Force experts and local experts. The afternoon was comprised of regionally driven panels related to financial transparency issues: *The Debate on Tax Havens and the Climate for Foreign Investment: Issues in the Indian Context* and *Progressive Taxation Policies in Asian Countries: Challenges and Opportunities*. The conference was opened by the Task Force Director Raymond Baker and closing remarks were given by CBGA's Executive Director Subrat Das.

Panelists for the sessions included government officials, academics, civil society activists and Task Force experts. A number of journalists were also in attendance and the Conference was covered in three different publications (Annex 2- Press Coverage).

This report provides a summary of the presentations and discussions at the conference. The Task Force website has the video and audio recordings of all the presentations from the conference for more details on the issues discussed.

OPENING REMARKS

Raymond Baker, Task Force on Financial Integrity and Economic Development

Mr. Raymond Baker delivered the opening remarks for the conference by setting the context, defining illicit financial flows and the magnitude of the problem globally with a little less than $1 trillion having flown out of the developing world. He stressed on the network of over 60 tax havens or 'secrecy jurisdictions' that facilitate this movement of illicit money by allowing the formation of entities/trusts/corporations behind nominees or trustees ensuring no one knows who the real owners are of the business. Other techniques used to move money offshore include trade mispricing involving overpricing imports and underpricing exports and money laundering. This shadow economy is aided by the loopholes in laws in western economies, where the illicit money often ends up.

He went on to clarify that these illicit finances are not just corrupt money of government officials but that a greater part of these estimates are concerned with commercial tax evasion. This money is not just sitting in banks outside that needs to be brought back, but a large part has already 'round tripped' back into India i.e it goes out, usually to a tax haven, acquires a foreign nationality and comes back into the economy again. While complementing the role of the Indian media in bringing attention to this issue, he noted that the focus on bringing back the money is misplaced and instead the focus needs to be on curtailing the generation and circulation of illicit money. He lauded the efforts of Indian government to strengthen its anti-money laundering laws, signing Tax Information Exchange Agreements and noted that India can be the leader in addressing the issue of financial transparency, not only for the benefit of Indian citizens but for people in the developing world all together.

Finally, he noted that increased transparency is the way to curtail illicit flows globally. He specifically highlighted the following mechanisms towards this:

1. Beneficial Ownership: Knowledge of the natural persons who own accounts i.e beneficial owners of accounts.
2. Automatic Exchange of Tax Information: Prime Minister of India called for the Automatic Exchange of Information almost two years ago which is a step in the right direction.
3. Country-by-Country Reporting: Multinational Corporations will be required to report their sales, profits, taxes paid, employment, investment etc in each jurisdiction they are in business.

"If we were to require Country-by-Country reporting right now, what we would find is a lot of MNCs reporting losses in India, Nigeria, Brazil etc and substantial profits in tax havens"

4. Reforms of customs procedures and steps to address trade mispricing
5. Harmonizing regulations concerning money laundering and better enforcement of anti-money laundering statutes.

Session I: Curtailing the Laundering of the Proceeds of Crime and Corruption

Heather Lowe, Global Financial Integrity (moderator); Arun Kumar, Jawaharlal Nehru University; Joseph Stead, Christian Aid

Heather Lowe began the discussion with an overview of money laundering, explanation of the concept of predicate offense and an insight into the processes that facilitate money laundering. She stressed on the need to eradicate anonymous shell companies and harmonizing predicate offenses for money laundering to address the issue effectively.

Arun Kumar provided the methodology for his estimates of black economy in India highlighting the increasing number of scams related to corruption in the country over the last ten years. He stressed on viewing black economy as a systemic issue, the roots of which lie in the weakness of democracy. He remarked that the problem 'is political, not technical' and increased transparency in the system will only come about through electoral reforms that will bring in a new public accountability in the democratic set up. He endorsed the growing social movements taking on the issue of corruption and financial transparency and said that such movements are the key to bringing in the desired change.

Joseph Stead highlighted the issue of Automatic Information Exchange (AIE), noting the limitations of information exchange 'on request' where the concerned authority already needs to know what they are looking for before making the request. Current examples of AIE include EU Directives, USA's FATCA, provisions within Multilateral Convention on Mutual Administrative Assistance in Tax Matters and unilateral efforts by countries like India pushing for AIE at various platforms. He said there are concerns with these efforts as it is resulting in USA/EU/G20/OECD having the benefit of AIE while the rest of the world does not. It is important for countries like India to keep up the pressure on G8/OECD countries for a multilateral system of information exchange that benefits developing countries as well. Asymmetric information exchange can be explored for countries that do not have the infrastructure in place to share information, but should be able to benefit from receiving such information automatically.

Session II: How to Make It Harder for Multinational Businesses to Dodge Paying Tax

Joseph Stead, Christian Aid (moderator); G.C Srivastava, Formerly Director General of Income Tax - International Taxation, Govt. of India; Dominic Eagleton, Global Witness; Promila Bhardwaj, Director General of Income Tax - International Taxation, Govt. of India

Joseph Stead presented an overview of the scale of the problem of MNC tax dodging highlighting that developing countries lose $160 billion a year through just one type of tax dodge. Recent research by Christian Aid showed that MNCs in India with links to tax havens pay 30% less tax. He explained the various ways by which MNCs dodge tax such as through the use of Double Tax Treaties (like India-Mauritius), tax incentives, transfer mispricing, false invoicing, round-tripping etc. Challenges in addressing the issue include the difficulty in applying international rules and norms (like the lack of data to determine 'Arm's Length' Price), OECD which does not have representation from developing countries setting international tax rules, lack of transparency of MNCs and governments.

G.C. Srivastava highlighted that the issue with MNC tax dodging is not just that they are not paying tax in the source country, but that they do not pay tax anywhere. This tax dodging is affecting not just developing economies but the developed world as well where most of these MNCs are based. He stressed on the industry of lawyers, consultants and chartered accounts who work round the clock to aid this tax dodging. 25% or more than that of these consultancy firms comes from 'structuring' of transactions or businesses. Specific concerns he expressed include the reluctance on the part of MNCs to share information and misrepresentation of information regarding the nature of business activity in the country. Another concern is subsidiary-parent relationship and taxing the subsidiary for the operations really done in the source country. A distinction needs to be made between legal form and economic substance which is the essence of the issue in the Vodafone case as well. Transfer Pricing is another area of concern, especially intangibles which is a big issue. In order to address the issue of MNC tax dodging, he suggested that we should have a legal framework whereby a certain method of accounting is prescribed for MNCs that includes a minimum level of information that should be shared with tax authorities in the country they are doing business. Tax authorities should also insist that all declarations about the functions being performed in the country must necessarily be signed by the Directors of the company to increase accountability. Effective exchange of information is an important area and India has been working towards this. He ended his presentation by noting that responsibility needs to be fixed on auditors that govern these accounts, an area where India's regulatory framework has failed.

Dominic Eagleton gave an overview of recent legislations in the US and EU that would require country-by-country reporting for extractive industries listed on their stock exchange. In USA, all oil gas and mining companies would have to report details such as taxes on profits, royalties, license fees, rental fees and other revenues to various governments around the world. The information provided will be very detailed, down to each individual project. He noted that making such information public will go a long way in empowering communities to hold their governments accountable. These laws will have implications for Indian companies as well with some estimates that close to 300 Indian extractive companies will have to comply with these legislations. However, Indian companies not registered in the EU or US stock exchange will not fall under this and is important that other countries have similar laws in place to ensure that there are no loopholes or an uneven playing field.

Promila Bhardwaj listed the various ways by which MNCs dodge tax and highlighted the systems, laws and processes put in place by Government of India to tackle this. She reiterated India's commitment to strengthening information exchange and emphasized various efforts being undertaken to include anti-avoidance provisions in DTAAs. On Base Erosion and Profit Shifting (BEPS), she stated that India has given its inputs to OECD's reports with one of their main asks being a shift to source based taxation. She noted that the report was silent on misuse of multi-layered corporate structure which is a popular vehicle to shift profits out of the country of business operations and urged that details of MNEs not paying taxes should be highlighted in the report. On transfer pricing, she highlighted the undue emphasis on 'risk' and control of risk. She also noted the lack of an internationally agreed standard on ownership of intangibles and payments for intragroup services as important issues under base erosion and profit shifting. She ended her presentation by categorically stating that India does not support OECD Transfer Pricing Guidelines to be followed by all countries including developing countries, as indicated by Group of Experts in 1999 and reiterated India's support for a UN Inter-Governmental Commission over the existing committee of experts.

Session III: The Debate on Tax Havens and the Climate for Foreign Investment- Issues in the Indian Context

Raymond Baker, Task Force on Financial Integrity and Economic Development; Deeksha Sharma, Oxford University; K.S Chalapati Rao, Institute for Studies in Industrial Development; Pronab Sen, International Growth Centre – India.

Raymond Baker opened the panel discussion by noting that there are more than 60 tax havens in the world currently whose genesis was in the 1960s, the period of de-colonisation and independence, which allowed certain political elites to take wealth out of their country aided by western economies who created the shadow financial system. This period also saw the beginning of the expansion of Multinational Corporations who have also been the driving force to shift profits across the border stimulating the shadow economy. He also clarified that the secrecy considerations that tax havens offer are much more important than their tax advantages. Tax havens also allow for creating a mechanism for continued circulation of money out. Most important reason why people use tax havens is the hidden accumulation of wealth which is what the phenomenon is all about. An individual as well as corporations who want to hide their wealth without accounting for it is the fundamental reason for the tax haven phenomenon thriving in the shadow financial system.

Deeksha Sharma presented a comparative study of India and China by looking at their approaches to tax reforms, specifically introduction of anti-abuse provisions, and their impact in both countries. The approaches taken by China and India to tackle tax avoidance are contrasting and while the former has been successful, India is still struggling. She suggested that *conflict, confusion and controversy* are the factors which stop India to become a successful story. Tracing the history of the controversial India-Mauritius double tax treaty, despite 6 rounds of renegotiation, no conclusion has been reached. Post the Vodafone case in India, she noted that there was no stark change in pattern of FDI inflows which could be detected in 2012 so as to attribute a significant negative impact only to changes in tax laws. In fact, UNCTAD's World Economic Investment Report 2012, considered India their third most attractive investment destination after China and US. In terms of anti-abuse provisions, although India was on the right track with the Direct Taxes Code by systematically introducing these reforms, the changing positions and controversies have resulted in the postponement of GAAR and intense criticism from the investor community. In contrast, though China had similar controversies, the government reacted by introducing anti-abuse provisions systematically in a legal framework rather than ad-hoc announcements or measures. Though there were some initial complaints about these changes, with a clear legal framework in place, things settled down and investors began to plan their investments with due consideration to these provisions. The law contributed to bringing stability in China's tax environment without substantially affecting China's FDI.

K.S Chalapati Rao provided the historical context to India's FDI and the government's approach in opening up the market to increased FDI in 1991 by justifying it to be in the interest of the country's industrial development. Subsequently, while FDI was only allowed in the manufacturing sector, currently almost all sectors (except defence and some service sectors) are open for FDI. But as per his studies, only 48% of the FDI received can be classified as real FDI. He also highlighted that the share of tax havens in equity inflows has increased from 40% in 1991-2000 to almost 70% in 2005-2009. He argued that there is a need for greater transparency in the laws and a re-look at our FDI policy to understand who really stands to gain from it.

Pronab Sen echoed the views that tax havens is not about tax savings and that their chain can be dismantled by a set of powerful countries globally. The question to be asked then is why that is not happening. The failure to renegotiate the India-Mauritius treaty is often discussed, but the treaty can be abrogated which does not require talking to anyone and yet no one asks that. Instead we are convinced that if we do not have this large network of treaties, we will lose out on FDI for which there is no evidence to support that argument. He noted the peculiar absence of UN taking up this issue strongly despite everyone recognizing the global nature of the problem. He reiterated that the anonymity that the entire system provides is the answer to why it continues to thrive. The focus needs to be on corporate governance, not tax, and addressing the issue systematically on the world stage like we do with many other issues.

Session IV: Progressive Taxation Policies in Asian Countries- Challenges and Opportunities

Vinod Vyasulu, Economist (Moderator); Ahsanul Karim, Coast BD (Bangladesh); Anton Ragos, Action for Economic Reforms (Philippines); Devendra P. Shrestha, Tribhuvan University (Nepal); Praveen Jha, Jawaharlal Nehru University (India)

The panel highlighted experiences of advocating for progressive tax policies in their country contexts. Ahsanul Karim gave an overview of the tax structure in Bangladesh noting that 75% of total tax revenue is from indirect taxes, making it a very regressive system. He explained the political economy behind the recent VAT expansion in Bangladesh as a result of IMF loan conditionality and its impact on an already regressive system.

Anton Ragos focused on their experience with bringing in sin tax reforms in Philippines to meet health and revenue objectives. He noted that framing the issue of sin tax as a health measure, rather than revenue, helped to make it successful. He stressed on the need for credible research, baseline data and tracking outcomes as important advocacy tools towards any successful campaign.

Devendra Shrestha highlighted the difficulties of pushing for reforms related to progressive taxes in light of political instability in Nepal. He focused on the political economy of the country while highlighting issues such as low compliance levels, complex Income Tax Act, over/under invoicing and tax administration.

Praveen Jha gave an overview of India's tax system, again highlighting its regressive structure. He provided examples of how this could be addressed and the various types of progressive tax policies that are not used to their potential such as property tax and wealth tax. He noted that the crux of the problem lies in the need for an alternate macro-economic policy regime within which specific tax policies can be contextualized.

Concluding Remarks

Subrat Das, Centre for Budget and Governance Accountability

The adverse consequences of the magnitude of the problem of illicit financial flows are more significant for developing and under-developed countries whose governments are struggling to raise adequate public revenue. While it is difficult to address some of these underlying factors, it is not impossible. A lot of efforts are needed on these issues at the regional and national levels. He suggested that the focus needs to be on enhancing the public discourse on these issues rather than influence the sense of urgency of our governments to take corrective measures. Governments also respond to increased public pressure or political signals better rather than purely technical or academic signals. He concluded by expressing thanks to the Task Force for the opportunity to collaborate towards outreach efforts in the Asia region. He also thanked the speakers, moderators and participants for attending and contributing towards the informative discussions over the day.

Annex I- Participants List

Sl. No.	Name	Organisation	Country
1	Tritesh Nandan	Governance Now	India
2	Ahsanul Karim	CoastBD	Bangladesh
3	Anton Ragos	Action for Economic Reforms	Philippines
4	Arun Giri	Taxsutra	India
5	Ben Satriatna	Taxation Advocacy Group	Indonesia
6	B.P. Mathur	National Institute of Financial Management	India
7	Chitra Nair	Global Compact Network India	India
8	Arun Kumar	Jawaharlal Nehru University	India
9	Saumen Chattopadhyay	Jawaharlal Nehru University	India
10	Krishna	Jawaharlal Nehru University	India
11	David Buhril	Sinlung Human Rights Foundation	India
12	Dedi Haryadi	Transparency International Indonesia	Indonesia
13	Deeksha Sharma	Oxford University	UK
14	Deepak Xavier	Oxfam India	India
15	Devendra Prasad Srestha	Tribhuvan University	Nepal
16	Dietlind Lerner	Task Force	USA
17	P. U. Prusty	Jawaharlal Nehru University	India
18	Dominic Eagleton	Global Witness	UK
19	Farjana Akter	VOICES	Bangladesh
20	Rich Rowden	Jawaharlal Nehru University	
21	Hansha Sanjyal	Global South Initiative	Nepal
22	Harsh Singh Rawat	CBGA	India
23	Heather Lowe	Task Force	USA
24	Immanuel Varte	CORE Manipur	India
25	Pranab Sen	International Growth Centre - India	India
26	Jawed Khan	CBGA	India
27	John Kumar	Christian Aid, India	India
28	John Raja	Economic Times	India
29	Joseph Stead	Christian Aid	UK
30	Jot Prakash Kaur	Global Compact Network India	India
31	Kanhaiya Singh	NCAER	India
32	Kanika Kaul	CBGA	India
33	Anand Kumar	Christian Aid	India
34	Lydinyda Nacpil	Jubilee South- Asia Pacific	Philippines
35	Sandeep Chachra	Action Aid	India
36	Rochelle Momerg	FIC, South Africa	South Africa
37	Manzoor Ali	CBGA	India
38	Porter McConnell	Task Force	USA
39	Maya Rostanty	PATTIRO	Indonesia
40	Mazher Hussain	COVA	India
41	Nadia Saracini	Christian Aid	UK
42	Narendra Jena	CBGA	India

43	Nesar Ahmad	Budget Analysis Rajasthan Centre	India
44	Nilachala Acharya	CBGA	India
45	Nita Bhalla	Thomson Reuters Foundation	India
46	Paranjoy Guha Thakurta	Freelance Journalist	India
47	Sagnik Dutta	Frontline	India
48	Pooja Rangaprasad	Task Force / CBGA	India
49	Pranay Sinha	University of Birmingham	UK
50	Prashant Prakash	CBGA	India
51	Praveen Jha	Jawaharlal Nehru University	India
52	Priyadarshini Mohanty	CBGA	India
53	Promila Bhardwaj	Central Board of Direct taxes, Govt. of India	India
54	Purba Chownill	Vision 2020 Ltd.	India
55	Rakesh Mittal	Indian Social Action Forum	India
56	Ram Kishen	Christian Aid	India
57	Ravi Duggal	International Budget Partnership	India
58	Raymond Baker	Task Force	USA
59	Premila Nazareth Samanand	Independent Researcher	India
60	Rodolfo Bejarano	Task Force	Peru
61	Kirthi V. Rao	Live Mint (Newspaper)	India
62	Samar Verma	IDRC	India
63	Sameer Dossani	Action Aid International	India
64	Mohit Srivastava	Media Shakti	India
65	Sankhanath Bandyopadhyay	CBGA	India
66	Sarah Bracht	Task Force	USA
67	Sarah Muyonga	Task Force	Kenya
68	Saumya Shrivastava	CBGA	India
69	Sayed Ikram Afzali	Integrity Watch Afghanistan	Afghanistan
70	Seeun Jeong	Chungnam National University	South Korea
71	Manoj. R	PTI- Press Trust of India	India
72	Ajai Kuruvila	PRAXIS	India
73	Smita Gupta	Communist Party of India (Marxist)	India
74	Tilak R. Arora		India
75	Sona Mitra	CBGA	India
76	Subrat Das	CBGA	India
77	Souvik Bhattacharryya	TERI	India
78	Sumita Gupta	CBGA	India
79	D.K. Sikha		India
80	Tara Rawat	CBGA	India
81	Tina Søndergaard Madsen	Royal Danish Embassy, New Delhi	India
82	Subrata De	Christian Aid	India
83	Towfiqul Khan	Centre for Policy Dialogue	Bangladesh
84	Vibhooti Malhotra	MPC Legal	India
85	Vinod Vyasulu	Special Advisor, CBGA	India
86	Wulandari Wulan	Inisiatif	Indonesia
87	Ruchi Gupta	NCPRI	India
88	Devika Das		India

89	Chalapati Rao	ISID	India

Annex II- Press Coverage

1. *Experts call for decisive policy to curb illicit outflow of wealth from India*, The Times of India
2. *Charities say graft, tax evasion hold back poor countries' development*, Reuters
3. *DGIT criticizes 'tax dodging', info non-sharing by MNCs; outlines "name & shame" strategy*, Taxsutra (subscription needed)