Statement by the South Centre at the 57th Session of the Human Rights Council on "*Realizing the right to development: The case for a United Nations framework convention on international tax cooperation*"

Excellencies, ladies and gentlemen,

The South Centre has played an active role in supporting its 55 Member States and other developing countries in taking forward the longstanding dream of the developing world to have an intergovernmental tax body at the United Nations (UN). It is a matter of great pride and joy that the Terms of Reference of the UN Framework Convention on International Tax Cooperation (FCITC) have been adopted by the overwhelming majority of the UN members. The years to come will see the creation of a new system of international tax governance that can be genuinely inclusive and effective and firmly anchored within the UN system.

There is much work to be done. Despite decades of efforts, the OECD's rules have failed to stop tax related illicit financial flows (IFFs), which include assets generated through tax avoidance, leading to continued losses of hundreds of billions in revenues each year that impair the realization of the Right to Development. The extreme complexity of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan has served more to benefit tax advisers and Big 4 accounting firms than developing countries.

It is claimed by the OECD that the Global Minimum Tax will act as a disincentive for illicit financial flows such as profit shifting. However, the design of the rules makes it clear that tax avoidance can continue under the OECD Global Minimum Tax. Multinationals can continue paying zero under the so-called "Minimum" Tax. It is now clear that the real objectives of the Global Minimum Tax are twofold; firstly, to discourage multinational enterprises of developed countries from shifting operations to developing countries. Secondly, to eliminate developing countries' ability to offer tax holidays and through the system of qualified refundable tax credits only allow grants and subsidies as policy tools to attract investments. This clearly benefits the developed countries who have more resources at their disposal to give such subsidies. **As such, the OECD Global Minimum Tax restricts the ability of developing countries from attracting investments in high technology and other sectors and moving up in the value chain and, hence, undermines the development efforts of developing countries.**

For these reasons, a genuinely effective solution on stopping tax related illicit financial flows is urgently needed and can be achieved via the provisions and a protocol to the UN FCITC on IFFs. The following are elements that can be considered for inclusion in such a protocol:

1. **A universal, intergovernmentally agreed definition of tax related illicit financial flows that includes tax avoidance:** At present tax avoidance is justified as being “legal”, and developed countries and the OECD continue to try to narrow down the definition of Tax related IFFs (TIFFs), which are a subset of Illicit Financial Flows (IFFs), to only mean those originating from tax evasion. The protocol on IFFs must clearly consider tax avoidance, including specifically transfer mispricing, as a source of TIFFs.
2. **A solution for intra-group payments of royalties, interest, dividends and fees for services**: These are among the most commonly used methods for profit shifting; despite the thousands of pages of the BEPS Actions there are still no effective solutions available to developing countries to address them. The protocol can devise effective solutions, such as by broadening the definitions of what are royalties and fees for technical services and removing existing exclusions.
3. The protocol on TIFFs could also address the challenge of rules governing the taxation of Offshore Indirect Transfers (OITs), for which paragraph 7 of Article 13 of the UN Model Tax Convention could be a useful starting point.
4. Public Country by Country Reporting so that all multinationals publicly declare how much tax they are paying in each jurisdiction where they operate.
5. Public centralized registries of beneficial ownership on all legal vehicles.
6. Standards and guidelines for taxpayers and enablers of IFFs (such as lawyers and accountants) to commit to reporting aggressive tax planning schemes.
7. **Making transfer pricing comparable data a public good:** At present transfer pricing databases such as Orbis are prohibitively expensive for developing countries which prevents their ability to curtail profit shifting. Such databases can be transformed into global public goods and made available to developing countries for free.

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The UN FCITC also has a major role to play in providing the world with a viable solution for taxing the digital economy. Countries have wasted more than 12 years negotiating a solution in the OECD that today nobody expects will be implemented. This is in particular due to the total opposition of the United States to allow its Big Tech firms to be taxed by other countries, even though these firms derive billions in revenues from these countries. This is also despite almost every single demand of the United States being appeased, leading to a solution that delivers what has been described as ‘peanuts’ in revenues. Revenue estimates by the South Centre, in collaboration with the West African Tax Administration Forum and the African Tax Administration Forum show that the 85 combined Member States of the African Union and the South Centre can expect between EUR 7-10 billion in revenues from the OECD solution for taxing the digital economy, and between EUR 20-34 billion from a 5% Digital Services Tax. Hence, the commonly used national Digital Services Taxes can generate more than three times the revenues of the OECD solution. For this reason the South Centre has been strongly advising its 55

Member States and all developing countries to no longer waste time negotiating in the OECD and to immediately introduce Digital Services Taxes and start collecting revenues which can be used to realize the Right to Development.

It is true that having a wide diversity of Digital Services Taxes can increase compliance costs and uncertainty for business and, for this reason, a protocol to the UN FCITC on taxing income from cross border services can provide a standardized and harmonized approach to Digital Services Taxes. The following are certain preliminary elements that can be considered for inclusion in such a protocol:

1. **A common understanding of what constitutes automated digital services**: The bulk of the income of Big Tech firms like Amazon and Google, is derived from automated digital services like online advertising, search engines, platform intermediation and so on. There must be a broad understanding of what are the services that should be covered. Paragraph 6 of Article 12B of the UN Model Tax Convention provides a good starting point.
2. **Common understanding on the range of applicable rates:** The protocol can prescribe an acceptable range of rates, to prevent too high or too low rates. The Commentary on Article 12B suggests 3-4% and this again can be a good starting point for the negotiations.
3. **Common understanding of what counts as taxable presence:** The protocol can also provide a mechanism for modifying the permanent establishment and business profits provisions in existing bilateral tax treaties to incorporate the principle of Significant Economic Presence (SEP), so that digitalized multinationals have a taxable presence in the countries where they derive revenues.
4. **Understanding on the elimination of double taxation**: There can be a commitment by countries that if a company has paid a Digital Services Tax that meets the common understanding, then such a payment will provide relief. For example, if a Big Tech firm is headquartered in a developed country and pays a DST to a developing country and the DST meets the conditions prescribed in the protocol, then the developed country can provide tax relief to eliminate double taxation. If a country chooses not to participate, its companies will suffer double taxation and become less competitive. This approach can therefore incentivize the participation of all countries in the protocol.

A protocol containing these elements can provide a much needed solution that meets the needs of both taxpayers and tax administrations.

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In conclusion, the UN FCITC is expected and can establish an inclusive, fair, transparent, efficient, equitable, and effective framework to introduce equitable international tax rules that provide all countries, particularly developing countries, with additional resources that can help realize the Right to Development. The South Centre will continue to actively support its Member States in the negotiations ahead with a view to bringing about a robust convention and the necessary protocols to a successful fruition at the earliest.

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