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Protocol 2 - APAs

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Co-lead, I speak on behalf of the Global Alliance for Tax Justice and the African CSOs Working Group on the UN Tax Convention.

We have a general concern about the approach of introducing rights for multilateral corporations to initiate mechanisms within the Protocol. We believe that the most common approach within UN law is for the UN Member States to define their commitments and hold each other to account, but not to define rights for corporations. We believe that dispute prevention mechanisms can be introduced without defining rights for corporations.

On the specific issue of APAs, they are often presented as a means of providing certainty within the existing transfer pricing system. But evidence shows that they do not address the fundamental weaknesses of that system. In some cases, they can deepen them.

The 2014 LuxLeaks scandal exposed how APAs have been used as confidential arrangements enabling multinational enterprises to significantly reduce their tax liabilities in jurisdictions where they conducted substantial economic activity. The Apple case similarly demonstrated how long-standing tax arrangements could ultimately be challenged, resulting in €13 billion in tax being recovered by a single jurisdiction, despite the underlying profits arising from global sales. This is an example of how APAs provide neither fairness nor certainty, and thus it is unclear why they are relevant for the UN Tax Convention.

For developing-country tax administrations, APAs also come at a significant cost. They require considerable technical and administrative resources while reinforcing reliance on a transfer pricing framework that has consistently proveN unfit for purpose. APAs lock in questionable profit allocation methodologies for years and due to their legally binding nature, constrain tax authorities' ability to respond when aggressive tax avoidance or profit shifting is subsequently identified.

We are particularly concerned about Art 2 (3) in the protocol on coordinated unilateral APAs.

Coordination between tax administrations does not, by itself, resolve these concerns. Where jurisdictions negotiate or align separate agreements with the same multinational enterprise, taxing rights can still be determined through confidential, case-by-case arrangements rather than transparent and universally applicable rules.This risks creating a patchwork of negotiated outcomes that will favour multinational enterprises and more powerful tax administrations, while leaving developing countries with weaker bargaining positions and potentially diminished taxing rights.

The question, therefore, is not simply how to make APAs more efficient or more accessible to tax administrations. It is whether the protocol should legitimise an instrument that remains rooted in a fundamentally flawed transfer pricing framework. We do not believe it should.

We urge Member States to ensure that this protocol advances structural reform rather than entrenching transfer pricing and its derivatives, including APAs.

Thank you.