Global Justice Program
‘Justice in Development: Securing a Place for Tax Justice and Transparency on the Post-2015 Development Agenda’

Address from Jo Marie Griesgraber, Ph.D., Executive Director
New Rules for Global Finance, Washington, DC

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The first Financing for Development conference in 2002 in Monterrey, Mexico, introduced the central role that domestic taxes play in the panoply of development funders. Monterrey raised the UN committee of experts on international tax cooperation from an ad hoc body to a permanent entity. Three key steps are needed to ensure that that domestic resources play their critical role in ensuring the achievement of the Post-2015 Development Agenda—all depend on transparency: 1) raising the UN committee to an intergovernmental body; 2) revising the OECD Common Reporting Standards on automatic exchange of tax information to avoid easy “scamming of the system” and to ensure the full participation of developing countries; and 3) the full implementation of the Legal Entity Identifier system so all information is complete, transparent and free to the public.

1) Raising the UN committee to an intergovernmental body

The single entity with responsibility for tax matters on the global scale that is both transparent and globally representative is the UN Committee of Experts on International Cooperation on Tax Matters. All meetings are open; its agenda is posted ahead of time on the UN website; its papers are available for review and comment by all interested parties; it formal meetings and its working groups are open to governmental and non-governmental participants, whether from for profit or not for profit organizations.

It is also the weakest possible entity. Answerable to UN ECOSOC Committee, it has a budget for one five-day meeting per year; with 1.5 (maybe 2!) full time staff within the Financing for Development Office of UN Department of Economic and Social Affairs. Each year, sometimes twice a year, the G77 plus China call for an increase in the budget of the so-called UN Tax Committee; each year the OECD oppose the increase, arguing the UN budget cannot cover it, or it does not have a sufficient track record to be evaluated for its effectiveness, or whatever. The UN Tax Committee is a gathering of experts, representing only themselves, although each is nominated by a government and is often a government employee; the UN Secretary General makes the selection of 24 experts from those nominated by governments. The Committee’s budget does not cover travel for the Secretariat nor for LIC-based experts to participate in additional events, and its constrained budget gives effective preference to those who can afford to cover their own expenses—the private sector and OECD country-based experts.
The singular importance of elevating this body to an intergovernmental body with budget and authority would effectively displace the OECD as the de facto global tax rule-making body. The OECD is the club of wealthy countries. The OECD also sponsors the Global Forum on tax transparency which has a membership of about 100 countries. However, its staff is paid by and answerable to the OECD Secretary General, and its agenda is to implement OECD policies—primarily bilateral agreements to share tax information “on demand”, that is, the requesting government must already have all the details that are deliberately and skillfully hidden from any national government. In other words, to catch a tax cheat, the government must have all the information it needs before it can get that information from the other government! Even the G20 recognized the limits of the OECD and its Global Forum when it mandated research and implementation plans for a global policy of automatic exchange of information on taxes. Which leads us to item number 2.

2) Revising the OECD Common Reporting Standard on automatic exchange of tax information to avoid easy “scamming of the system” and to ensure the full participation of developing countries


The CRS is based in large part on the US Foreign Account Tax Compliance Act (FATCA), which requires foreign banks to report to the US Internal Revenue Service information on the interest earnings of accounts held by US Citizens; if this information is not provided, a 30% tax is levied by the IRS on the account. Subsequently the US has agreed that banks or deposit holding financial institutions can report this information to their national government which will send it to the US IRS. Further, the US has arranged for US banks to supply comparable information to cooperating governments. This is a powerful law, which probably led the G20 and G7 to support automatic information exchange on tax matters (AEI). However, FATCA is a bilateral arrangement with the US in charge and benefitting most.

The CRS has many weaknesses. To appreciate the full number and complexity of these exemptions, I encourage you to go to


At the Financial Secrecy Index.com website, Knobel and Meinzer have a 56-page document detailing all aspects of the CRS, especially its many problems. I will mention a few of those exemptions.

Unlike FATCA, CRS does not penalize anyone for failure to comply. It provides multiple exemptions, and prevents participation by developing countries. The CRS sets the account size to be reported as anything above $250,000 after July 2016. It accedes to the demands of tax havens, not requiring them to reciprocate by sharing even when they receive tax information on their residents. It tolerates the development of “Tax Residency Certificates” that tax havens can sell to people who may or may not be physically resident in their territories. Further, the CRS does not require identification of beneficial
owners (i.e., the actual persons benefitting from the profits) of trusts and foundations and similar arrangements which are often used to hide money and actual owners. Beneficial Owners (BO) can hide assets by claiming to be an “active non-financial entity.” Even when beneficial ownership is required in the exchange of information, there is no public record of Beneficial Owners. The CRS does not establish a Competent Authority Agreement (CAA) to ensure that all countries that sign the multilateral CRS actually conform. Indeed, the CRS does not require tax havens to provide requested information. Rather, there are elaborate protections to guarantee privacy of information that is shared—to such an extent that the CRS actively forbids sharing of tax information with law enforcement authorities. Therefore the professional facilitators of tax evasion and avoidance as well as the dirty politicians, drug lord, thieves, gangsters, and human traffickers—as well as your everyday tax cheats—will continue to enjoy the privacy they have come to cherish.

In the February 2014 version, the CRS called for capacity building for developing countries. By July 2014, that language was gone. Nor is there a provision for “non-reciprocity” whereby developing countries receive information on tax crimes committed in their countries, even when they are not yet able to provide similar information to other governments. Only tax havens (defined here as a country with no income tax) are able to receive tax information without providing the same.

Despite its many flaws, the CRS is an important step toward greater transparency in sharing tax information. The UN post-2015 process, should work to remove its flaws, make it truly universal, and guarantee technical support for developing countries so they can gain the benefits of the tax owed them.

3) Implementing in full the Legal Entity Identifier system so all information is complete, transparent and free to the public

A third critical step to ensure that tax transparency is at the service of development involves the Legal Entity Identifier or LEI System. The problem it was designed to address is best understood in the context of Lehman Brothers collapse in 2008. No one in the US government or in the US private sector or even in Lehman Brothers understood all the connections and interconnections of all the esoteric financial products Lehman was associated with. The many cards that tumbled with Lehman terrified markets and governments around the world. So when AIG began to teeter threatening to bring down more institutions with it, the US Government stepped in with the first money which would eventually lead to trillions of dollars of tax money to bail out the financial sector.

This same secrecy is facilitates the illicit financial flows that Global Financial Integrity and that Tax Justice Network and others write about. How to track money, and financial products few know exist and fewer understand? To address this conundrum, in 2009 the G20 tasked the Financial Stability Board with setting up the “Legal Entity Identity” system. In effect LEI is comparable to the “bar codes” now found on every item purchased in virtually every store in the world. The LEI is an alpha-numeric code, assigned to each financial institution or entity, and every product that comes forth from each and all. As it matures, the LEI system will also include information that records the relationships between and among financial entities and products.
Does this LEI system exist? What remains to be done? Will it be effective?

The LEI has been launched. During the first phase (well underway) for each financial entity core information is being gathered. Called “reference data” it includes the official name of the legal entity, the address of the headquarters, the date of the first LEI assignment, business registry information (if applicable), and other basic information. However, this information is insufficient for genuine transparency and assessing systemic risks in global finance. The second phase will, therefore, focus on collecting “relationship data.” Relationship data that will be included in the GLEIS is currently being defined and may include information about subsidiaries, parent companies, and beneficial owners, among other data.

The Structure of the GLEIS system is complete, and it is also up and running—slowly!

The G20 mandated the Financial Stability Board to establish the LEI system. The FSB designed the LEI Regulatory Oversight Committee to establish the GLEI Foundation; the ROC now has the responsibility to supervise the Foundation in the public interest.

On June 26, 2014, the Foundation was formally launched with the first meeting of its 16-member Board, chaired by Gerard Hartsink.

According to the 30 June 2014 Press Release of the LEI ROC, during the initial phase, beginning in 2013, under the supervision of the ROC “16 endorsed ‘pre-Local Operating Units’ (‘pre-LOUs’) have assigned almost 300,000 ‘pre-LEI’ codes to entities from more than 150 countries for use in regulatory reporting. And 12 other pre-LOUs have been granted prefixes to support planning and development in advance of launching operational platforms.” With the establishment of the Foundation itself, all preliminary LEI codes are now formally “Legal Entity Identifiers”.

So what is currently operating, is a 3-tiered structure: the supervisory Regulatory Oversight Committee (ROC); the Global Legal Entity Identifier Foundation (GLEIF); and Local Units. Together, these 3 tiers form the Global Legal Entity Identifier System or GLEIS – endorsed by the G20 in Los Cabos, Mexico, in June 2012.

With all these levels and acronyms, will the LEI system bring about needed transparency to the global financial system—and hence, reduce the likelihood of illicit financial flows, enabling developed and developing countries alike to track the flows of finances across borders and subject the same to taxes???

There are questions and there is hope—not unlike the OECD’s CRS.

1. Will the ROC be an effective supervisor ensuring the public interest? The current answer is it is not looking good. The same press release says the ROC will uphold principles including” assuring that the system produces high quality freely available data about entities operating in financial markets on a globally consistent basis.” Serious questions have arisen about the “freely available” nature of any data collected. Currently businesses such as Bloomberg can charge in the order of $100,000 for information investors may want on the connections and linkages of a given financial entity.

2. The LEI is a voluntary system. The press release cheerily proclaims: “In addition to further adoption of the use of the LEI for derivatives reporting on a global basis, authorities are extending reporting requirements for the LEI, where appropriate, to the banking sector, securities issuance,
investment holdings for insurance and funds, and other uses such as identification of firms in credit registers.” If past behavior is a predictor of future behavior, one might anticipate some future secrecy on the part of various financial entities and governments.

3. Since that happy day in June when the Foundation was inaugurated, it seems little has been accomplished. There have been few meetings, and little public information, even for those who participated directly in the design and launch of the Foundation and the Local Operating Units. From all available information, nothing is happening on the design and assignment of LEIs demonstrating the relationships between and among products and entities.

Despite these many cautions, the process has been launched. Its success is vital for bringing transparency to the financial system, thereby reducing illicit financial flows and hopefully enabling greater domestic resource mobilization. Public attention needs to be brought to the LEI and to its potential. If it remains an arcane exercise hidden in Switzerland, it will come to naught. But it has the potential to be an amazing tool for global financial transparency and accountability.

You can find out more about the LEI and the Financial Stability Board at our website, FSBwatch.org, New Rules also has an FSB-Action listserv in case you wish not only to be informed, but also effective in shaping these issues and their implementation.

In sum:

Important movements are afoot to make tax transparent and at the service of the post-2015 Sustainable Development Goals. For them to be successful will require the mustering of political will, and many, many people such as yourselves to not shy away from seemingly dense and arcane matter, to bring them to public and political attention, to get them implemented, and then to continue monitoring so they will serve the long-term goals of sustainable development for all within the parameters of the planet’s ecosystem.