To OECD/CTPA
Tax Treaties, Transfer Pricing and Financial Transactions Division
Sent per email to: taxtreaties@oecd.org

Cc:
Ministry of Finance, Norway
Sent per email to: postmottak@fin.dep.no

OECD, Centre for Tax Policy and Administration on Base Erosion and Profit Shifting (BEPS)
Sent per email to: CTP.BEPS@oecd.org

Your ref: Action plan 6, 8. April 2014 Our ref:2001/123 Date: 8. April 2014

COMMENTS ON ACTION 6 PREVENT TREATY ABUSE

The OECD has invited interested parties to send comments by 9th April 2014 on a discussion draft, which includes the preliminary results of the work carried out in the three different areas identified in Action 6:

A. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.

B. Clarify that tax treaties are not intended to be used to generate double non-taxation.

C. Identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country.

PWYP Norway is a national chapter in the worldwide network Publish What You Pay, which work for transparency and accountability in the extractive industries. While the Norwegian chapter is backed by 19 Norwegian civil society organizations, the full international network is backed by more than 800 organizations worldwide, most of them working in resource rich countries in the South.

PWYP Norway has recently sent its comments to the consultation on economic “spillovers” to the IMF, which we copied to OECD/BEPS. However, we would like to introduce this cover letter in order to link the paper to IMF closer to the work OECD is doing on treaty abuse. Attached is the full document sent to IMF.

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We will particularly address "the design of domestic rules" under A, "double non-taxation" under B and "the tax policy considerations that ... countries should consider" under C above.

In the document to IMF we outline 4 areas that need to be addressed in order to avoid capital flight and treaty abuse:

- **Unilaterally:** A country needs to have a good system of withholding taxes in order to avoid amongst other treaty abuse. It is fully possible to significantly hinder capital flight if a few general principles are followed with respect to how withholding taxes are built up. First, multinational companies need at least one road to freely receive money back on an investment. This should be through dividends, which is always based on after-tax cash flows. Withholding taxes on dividends should therefore preferably be set to zero. Second, other cash flows which are not based on individual transactions, and which are always based on pre-tax cash flows, should preferably have withholding taxes built up using a system which takes into account the tax level in the country that receives the dividends. Such a system is fully described in chapter 4B in the document to IMF attached to this letter, and PWYP Norway regards it as a prerequisite in order to enter into a tax treaty.
- **Unilaterally:** Despite the ability of withholding taxes to stop a lot of capital flight, they are quite inadequate to deal with the problem of abuse of the financial instrument derivatives. PWYP Norway has produced a report, "Protection against derivative abuse"[1], where we describe the main mechanisms of how derivatives can shift potentially enormous amounts of pre-tax money across borders. In chapter 4C in the document to IMF attached to this letter, we describe how a simple, unilateral mechanism can stop derivatives abuse while at the same time protect the proper use of derivatives for hedging etc. PWYP Norway regards it as fundamental to have mechanisms in a tax system that effectively stops derivatives abuse. The protection will work also against new derivatives that are developed and the suggested mechanism is thus a general protection mechanism in a tax system.
- **Unilaterally:** Despite the ability of withholding taxes to stop a lot of capital flight, they are quite inadequate to deal with capital gains issues in a country's tax system. In chapter 4C in the document to IMF attached to this letter, we describe several approaches to capital gains taxation that a country needs to take into consideration before entering into a tax treaty. PWYP Norway regards it as highly necessary for a country to have a symmetrical approach to capital gains taxation in order to avoid capital flight through capital gains.
- **Multilaterally:** PWYP internationally has for years promoted introduction of rules for publishing tax payments on a country-by-country and a project-by-project basis. This has resulted in country-by-country regulation in the US for extractive industries and in the EU for extractive industries, forestry and also in France for the banking sector. PWYP Norway has produced a report, "An extended country-by-country reporting standard"[2], that addresses the need for putting such tax payments into their natural context on a country-by-country basis, as no figure in isolation is very meaningful. PWYP Norway has demonstrated how this can very simply be done by publishing, in notes to the financial accounts, 8 key financial figures, that creates the link between the tax payments published country-by-country and the basis for these tax payments. This is fully described in chapter 4D in the document to IMF attached to this letter. PWYP Norway regards it as fundamental in order for country-by-country reporting to

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[1] *http://www.publishwhatyoupay.no/en/protection-derivative-abuse*
[2] *http://www.publishwhatyoupay.no/en/node/16403*

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work properly and be a cost effective and effective instrument, that this context is published together with or in conjunction with the tax payments. PWYP Norway believe that extended country-by-country reporting is fundamental

- for investors to follow their money and be better able to prioritize which companies to invest their money in
- for regulators to create the appropriate regulation for multinational companies and national companies alike
- for civil society to ensure that companies are playing by the same rules.

PWYP Norway would recommend that OECD puts country-by-country reporting of tax payments *in context* as a main instrument to secure insight into multinational companies in order to support investor control, better regulation by governments and better guidelines from multinational institutions like the OECD and improved democratic control by civil society, media and others. PWYP Norway believes extended country-by-country reporting is the best instrument to counter principal-agent problems in today's world related to multinational companies and issues related to base erosion and profit shifting out of developing countries. It is thus highly beneficial that OECD supports and promotes extended country-by-country reporting.

We refer to the attached document for a full description of the problems highlighted and solutions promoted by PWYP Norway.

PWYP Norway sees that OECD intend to publish all comments received, and we appreciate this transparency.

Yours sincerely,
On behalf of Publish What You Pay Norway,

Mona Thowsen,
Secretary General