July 24, 2006

Issues to be Added to the Agenda of ECOSOC

(1) Code of Conduct on Cooperation in Combating Capital Flight and International Tax Evasion and Avoidance

The Tax Justice Network ("TJN") recommends that ECOSOC approve the resolution concerning the development of a Code of Conduct on Cooperation in Combating Capital Flight and International Tax Evasion and Avoidance, presented to this meeting by Professor Michael Mc Intyre, in particular to help developing countries mobilize domestic resources, as emphasized by the United Nations.

(2) Capital Flight and Tax Evasion as Corruption

TJN recommends that ECOSOC request the UN Committee of Experts on International Cooperation in Tax Matters ("UN Tax Committee") to consider whether capital flight and the resulting tax evasion should constitute acts of corruption within the scope of the United Nations Convention Against Corruption:

(a) Private sector corruption by the person (individual or company) that transfers funds to another jurisdiction and evades taxes. That person is illegally diverting for his/her/its private use, funds, tax revenue, that belong to the public sector.

(b) Corruption by financial intermediaries that knowingly encourage and facilitate capital flight and the resulting tax evasion.

(c) Public sector corruption by the governments in the onshore and offshore financial centers that provide bank secrecy and other confidential treatment in tax matters. Such treatment facilitates and encourages capital flight from other countries, and tax evasion in those other countries. Thus, governments in onshore and offshore financial centers knowingly aid and abet corruption.

(3) The Framework For Preventing and Combating Fraud and Corruption Being Developed by the International Financial Institutions

TJN recommends that ECOSOC urge the international financial institutions (African Development Bank, Asian Development Bank, Inter-American Development Bank, European Investment Bank, European Bank for Reconstruction and Development, the International Monetary Fund and the World Bank) that are developing a uniform Framework for Preventing and Combating Fraud and Corruption, as indicated in their joint statement in Washington DC on February 18, 2006, to include capital flight and the resulting tax evasion within the definition of corruption.

(4) Capital Flight and Tax Evasion as Money Laundering

TJN recommends that ECOSOC request the UN Tax Committee to consider whether money laundering laws should include as an offense: (a) assets being transferred cross border in violation of applicable exchange control laws; and (b) assets being transferred cross border and those assets and/or the income thereon not declared for tax purposes in the jurisdiction of residence/citizenship.

(5) Effective Exchange of Information: What constitutes "Effective Exchange of Information?"

TJN recommends that ECOSOC request the UN Tax Committee to prepare a report about what constitutes "effective exchange of information" for purposes of Article 26 of the UN Model Double Taxation Convention between Developed and Developing Countries ("UN Model Income Tax Treaty"). The UN Tax Committee should report on what information about (a) cross border payments and (b) beneficial ownership of companies, trusts, and other entities, a jurisdiction should routinely obtain and have available, in order to be able to comply with its obligations to exchange information pursuant to Article 26 of the UN Model Income Tax Treaty. TJN is concerned that the tax authorities in many jurisdictions do not routinely obtain domestically the appropriate information (resulting in de facto bank secrecy), and therefore those jurisdictions can not engage in "effective exchange of information".

(6) Role of International Financial Institutions in Capital Flight and Tax Evasion: Monitoring and Surveillance Responsibilities.

TJN recommends that ECOSOC request that the International Monetary Fund (IMF), in fulfilling its responsibilities of the monitoring and surveillance of onshore and offshore financial centers and the international financial architecture, include in its Reports on Standards and Codes (ROSCs) whether a jurisdiction that is an onshore or offshore financial center (i) overrides bank secrecy in tax matters, (ii) requires the automatic reporting of tax related information and has available tax information to be exchanged, and (iii) engages in effective exchange of information.

(7) Capital Flight and Repatriation of Assets

TJN recommends that ECOSOC request the UN Tax Committee to prepare a report on the legal measures (including pursuant to Chapter V, Asset Recovery, of the United Nations Convention Against Corruption, and also Article 27 of the UN Model Income Tax Treaty) reasonable and necessary for jurisdictions to recover and repatriate assets, and the income thereon, which have been illegally transferred from that jurisdiction to other jurisdictions, and accumulated in other jurisdictions, including (but not limited to) onshore and offshore financial centers.

(8) Issues in International Tax Collection and Tax Enforcement

TJN recommends that ECOSOC request the UN Tax Committee to study what measures, in addition to Article 27 of the UN Model Income Tax Treaty, Assistance in the Collection of Taxes, would be appropriate and reasonable in order to strengthen procedures for international tax collection and international tax enforcement.

(9) Transfer Pricing:

TJN recommends that ECOSOC request the UN Tax Committee to prepare a report on (a) the economic impact (the quantification) of transfer mispricing, in particular the economic impact (loss of tax revenues) on developing countries of transfer mispricing. In view of the recent interest expressed by the European Commission in the possible use of combined reporting with formulary apportionment as a partial solution to transfer pricing issues within the European Union, TJN recommends that ECOSOC request the UN Tax Committee to prepare a report on whether the arm's – length method or a method of combined reporting with formulary apportionment is the most appropriate method to combat transfer mispricing.

(10) Tax Competition

TJN recommends that ECOSOC request the UN Tax Committee to consider the harmful aspects of tax competition: the depletion of government tax revenues and the reduction of basic government services including health, education and other basic government services. The 1998 report by the Organization for Economic Cooperation and Development ("OECD") entitled "Harmful Tax Competition: An Emerging Global Issue," raised the issue of harmful tax competition. TJN recommends that the UN Tax Committee be asked to determine whether tax competition involving developing countries is undermining their ability to mobilize domestic resources for development and to create the "enabling domestic environment" called for in the Monterrey Consensus.