2016 UN Forum on Business and Human Rights
14-16 November 2016

Summary report

On the occasion of the Fifth Forum on Business and Human Rights, the International Bar Association's Human Rights Institute, the Geneva Office of the Friedrich-Ebert-Stiftung (FES) and the Center for Economic and Social Rights (CESR) jointly held a meeting on 'Rights and resources: embedding human rights in the corporate tax regimes'. The event took place on Monday, November 14 2016, after the opening session of the Forum
The event provided an opportunity to discuss how best to apply the UN Guiding Principles 'Protect, Respect and Remedy' framework to corporate taxation.

The objective of the meeting was threefold:
- to raise awareness about the legal content of the State obligation to mobilise resources and the implications of this obligation for tax regimes;
- to discuss concrete proposals to apply the UN Guiding Principles on Business and Human Rights and international human rights law to the tax practices of business enterprises;
- to give practical effect to human rights implications of tax policies in the pursuance of the sustainable development goals (SDGs).

Part I. States' obligation to respect and protect human rights in their corporate tax policies

The panelists highlighted the governments' positive legal obligations to mobilise resources for the realisation of human rights and the role of taxation to raise these resources. They mentioned the need for a fiscal basis ensuring universal and efficient coverage of public services. This implies the corollary obligation for states not to give away their right and tools to raise resources. When states restrict their ability to collect tax, they lose an important tool for fulfilling human rights. Currently, states often restrict their ability to collect tax through tax incentives in corporate tax regimes and through trade and investment agreements.

Three points were discussed:

First was highlighted the need to replace the **separate identity principle** by a principle recognising companies as unified entities. Pursuant to the former, a company is treated as a distinct entity from its members. Panelists recalled that corporations are fictions and state-created institutions: as such, the state has the obligation to ensure that the fiction meets the reality and that corporations be created and recognized as unified entities, in order to ensure control over foreign affiliate and prevent tax avoidance.
The reference in the recent OECD Base erosion and profit shifting (BEPS) action plan was mentioned. According to this, some action plans do look at companies as unified entities. Tax assessment is then done on a company-by-company basis, rather than following a country-by-country approach. This requires a basic level of information about companies. Overall addressing the principle of separate identity will require that a

number of relevant entities, e.g. tax authorities and parliamentarian bodies, have access to the relevant information about the structure of the company, and do not rely only on the documents provided by the company. The tax lawyer perspective stressed the importance that states be mindful of the profit attributable to companies rather than tax what is not attributable to the company.

Secondly, the importance for the state to conduct impact assessment of the **spillovers of their corporate tax or related regimes** was highlighted.

Finally, speakers recalled the principle of transparency in tax regimes, and the effect of trade and investment agreements. The Special rapporteur on an international democratic and equitable order intervened to highlight that there was no excuse for secrecy and the lack of transparency surrounding trade and investment agreements, as currently witnessed.

Part II. The responsibilities of business enterprises (in particular, multinational corporations, accounting firms and financial intermediaries) to prevent the human rights risks of their tax planning

Business enterprises have the responsibility to respect human rights through their corporate structures and throughout their operations, in line with the UN Guiding Principles. As recalled during the event, the UN Guiding Principles do not specifically mention any obligation regarding tax. However companies can demonstrate that they respect human rights when they have appropriate policies and **due diligence** procedures to ensure that they are not having negative impact on human rights. Multinational enterprises, as well as their advisers and financiers, need to acknowledge that their tax planning can have human rights impacts. The main reason invoked for businesses to comply with these responsibilities is the risk of being exposed-

It was clearly recalled that respecting the law would in no circumstances be sufficient for a human rights impact assessment. The loopholes are so widespread that should everybody comply with the letter of the law, nobody would pay.

Along these lines, it was asked that companies know about their bank accounts and that relevant information is communicated to country entities. Currently the black number about undeclared off shore wealth could reach 100-200 billion revenue. We don’t know the beneficiaries.

The G20 has recommended that companies pay taxes where they have activities. The event concluded on this current change in the normative and regulatory frameworks addressing tax justice and tax avoidance. Beneficial ownership is at the core of the issue, and there is a need to make a case for due diligence and human rights. Effective remedies should also be considered.