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Base Erosion and Profit Shifting

Responses to questionnaire for developing countries from the UN Subcommittee on Base Erosion and Profit Shifting

The Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries was established at the ninth session of the UN Committee of Experts on International Cooperation in Tax Matters (the UN Tax Committee) in October 2013.

The mandate of the Subcommittee is to monitor developments on base erosion and profit shifting issues, communicate with officials in developing countries and engage with relevant bodies such as the OECD on these issues.

The primary function of the Subcommittee is to communicate with officials in developing countries and ensure their views are fed into both the OECD/G20 BEPS project as well as the on-going United Nations tax cooperation work.

A note providing information on the project established by the OECD and G20 to address global concerns with base erosion and profit shifting (the BEPS project) was released earlier this year. This paper was prepared to advance the work of the Subcommittee by providing information on these issues with the aim of obtaining the views of developing countries.

To that end, the note included a short questionnaire on how developing countries view and prioritise the BEPS project issues – as well as many other base erosion concerns. The questionnaire was made available in English, Spanish and French.

Obtaining responses to these questions has been critical to ensuring the mandate of the

There appeared to be different views over how the level of tax paid by an MNE was judged to be appropriate or not, other than the standard tools of comparability and risk analysis.

All of the respondents agreed that the OECD BEPS Action Plan items identified in the

Question two – if you are affected by base erosion and profit shifting, what are the most common practices or structures used in your country or region, and the responses to them?

Half of the respondents identified that transfer pricing (or transfer mispricing) specifically is a major problem. Many of the other respondents raised concerns about excessive or unwarranted intra-group payments without specifically mentioning transfer pricing (for example, only normal/routine compensation being provided for important R&D performed).

Over half of the respondents mentioned transfer pricing legislation/action as a response to BEPS. Two have recently enacted transfer pricing legislation, although one country has said

Question four – what main obstacles have you encountered in assessing whether the appropriate amount of profit is reported in your jurisdiction and in ensuring that tax is paid on such profit?

One country has not encountered any obstacles.

One country stated that a major obstacle is the lack of specific rules relating to the digital economy.

One country stated that a major obstacle is the presence of a significant unregulated cash economy.

Another country considered that there was a lack of specific rules relating to branches which caused them problems.

Six respondents raised concerns about resourcing – due both to a lack of technical skills and insufficient resources.

Three respondents stated that a major obstacle is inadequate legislation/legal infrastructure. An additional respondent stated that it does not have robust standard transfer pricing guidelines.

A lack of information was raised as the major obstacle by most respondents, although for different reasons. Half stated that there is a lack of effective exchange of tax information, or when there are exchange-of-information mechanisms in place, information is not provided in a timely manner.

Several respondents stated that companies are uncooperative. A few others stated that there is a lack of transparency when it comes to international value chains.

Over half of the respondents stated that a lack of data on comparable businesses/industries/sectors is a major problem.

Question five - do you agree that these are particularly important priorities for developing countries?

All but one respondent agreed that these were priority actions for developing countries.

One country said that it was not possible to generalise the priorities of such a diverse group of countries.

Question six - Which of these OECD's ActionPoints do you see as being most important for your country, and do you see any other priorities?

Nine countries included Action 8 (TP – intangibles) and Action 10 (TP – other high risk).

Eight countries included Action 4 (Interest deductions), Action 9 (TP – risks and capital) and Action 11 (data analyse).

Seven countries included Action 6 (Treaty abuse).

One country said that all of them were priorities.

Question seven - Are there other Action Points currently in the Action Plan but not listed above that you would include as being most important for developing countries?

Seven countries included Action 7 (Avoidance of PE status)

Six countries included Action 1 (Digital economy)

Four countries included Action 5 (Harmful tax practices)

Three countries included Action 3 (CFC rules)

Two countries included Action 2 (Hybrids)

One country included Action 14 (Disputes resolution) and one country included Action 15 (Multilateral instrument).

Question eight - Having considered the issues outlined in the Action Plan and the proposed approaches to addressing them (including domestic legislation, bilateral treaties and a possible multilateral treaty) do you believe there are other approaches to addressing that practices that might be more effective at the policy or practical levels instead of, or alongside such actions, for your country?

Capacity building (including training, improving risk analysis tools, technical assistance and access to databases) was raised by seven countries.

Two countries suggested that the OECD should produce guidelines on the BEPS items.

Other suggestions included expanding the tax sections of the OECD guidelines for multinationals, getting multinationals to include commitments not to pursue BEPS strategies in their corporate governance documents, and allowing some flexibility so that countries can adopt rules that fit their situation/environment.

One country said that any BEPS changes should not impede economic growth or limit the use of growth enhancing tools like tax incentives.

One country suggested that robust anti avoidance legislation, both general and specific rules, were essential.

Question nine - Having considered the issues outlined in the Action Plan, are there any *other* base erosion and profit shifting issues in the broad sense that you consider may deserve consideration by international organisations such as the UN and OECD?

Two countries wanted to see a summary of submissions on this questionnaire.

Two respondents suggested a rebalancing of source vs residence in tax treaties.

Other suggestions included guidelines for domestic GAARs, guidelines of how to run, resource and fund international tax teams (e.g. TP units), expand the EOI network, look into branches and the cash economy, advice on business restructuring, analysis of the harm done by tax incentives, set up a global forum for BEPS.

One country suggested that trade mispricing (a broader issue than simply transfer pricing) which includes issues relating to fraud and illegal activity was important.

Question ten - Do you want to be kept informed by email on the Subcommittee's work on base erosion and profit shifting issues for developing countries and related work of the UN Committee of Experts on International Cooperation in Tax Matters?

All countries wished to be kept informed.
