



## **Workshop on Tax Incentives and Base Protection New York, 23-24 April 2015**

### **Checklist for Drafting Tax Incentives: Focus on Income Tax**

#### **Policy**

- Develop broad policy (who, what, when, why, which taxes)
- Make the economic and social case (including forecasts, projections, externalities)
- Detail policy and draft (addressing the points below)
- Review policy periodically (using reporting requirements below)

#### **Responsible/administering authority**

- Ministry of Trade/Investment Board
- Ministry of Finance
- Tax administration
- Co-ordination with other authorities (need for memorandums of understanding, joint audits)

#### **Legal basis**

- Tax law, separate law, other law, agreements
- Detail (regulation, rulings, agreements)
- Discretion (who, what criteria, what review)
- Reconciliation with general rules that are sought to be modified
- Legal basis for requiring authorities applying general rules (e.g. tax authority) to apply the modified rules

#### **Eligible persons**

- Types (company, individual, trust, partnership, etc.)
- Timing (when formed)
- Location (resident or non-resident, nationality)
- Relationship (connected persons getting multiple incentives)
- Change of ownership of artificial entities

#### **Qualifying activity**

- Primary (business, employment, investment)
- Specific (type of business, e.g. defined by registration, interface with sector laws)
- Timing (existing or new, time limit of incentive)
- Location (international, national, regional)

#### **Allocate use of assets to the activity**

- Type (tangible, intangible, current, non-current)
- Ownership (owner, finance lease, operating lease)
- Value (historic cost, fair value, depreciation, related party transactions)
- Timing (new, second hand, existing ownership, disposals)
- Location (international, national, regional)

**Allocate use of labour to the activity**

- Type (employee, new recruits, graduates, independent contractors)
- Value / number
- Timing (new, existing, retrenchment)
- Location (international, national, regional)

**Allocate payments (made or received) to the activity**

- Type (cash, in-kind benefits, related party)
- Allocation
- Quantification (transfer pricing)
- Timing (cash, accruals)
- Character (sales proceeds, capital proceeds, investment receipts, etc.)
- Location (source of payments)

**Calculate result from activity**

- Separation (treat as separate from other activities)
- Apportionment of external dealings (transfer pricing)
- Intra-entity dealings (transfer pricing)
- Ring-fencing of losses (how to define, what breaches)

**Apply rates/benefits****Provision of information**

- Reporting to the tax administration under general tax rules