Developing Countries• Reactions to the G20/OECD Action Plan on Base Erosion and Profit Shifting

This article describes and examines the reactions of developing countries to the G20/OECD Action Plan on Base Erosion and Profit Shifting as communicated to the Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries of the UN Committee of Experts on International Cooperation in Tax Matters.

1. Introduction

The decision by the G20 and the OECD to jointly consider ways of countering base erosion and profit shifting reflected a realization that these issues adversely affect all jurisdictions. Clearly, this issue is not just relevant to developed economies.[1]

Although base erosion and profit shifting has the potential to affect all nations, it is by no means axiomatic that its effect is uniform or that countries at different stages of development would agree on how best to address the issue. Recognizing this, the UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) asked developing countries to provide their views on this subject, in particular, their perspectives on fair and appropriate means of responding to the challenges imposed by base erosion and profit shifting.

Since the beginning of 2014, the following 13 developing countries have publicly responded to a UN Tax Committee questionnaire (the questionnaire)[2] on base erosion and profit shifting:

- Bangladesh;
- Brazil;
- Chile;
- China (People•s Rep.);
- Ghana;
- India;
- Lesotho;
- Malaysia;
- Mexico;
- Singapore;
- ailand;
- Tonga; and
- Zambia.

Several other countries also responded but preferred t

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1. In June 2012, the G20 leaders discussed the need to counter base erosion and profit shifting at their meeting in Mexico. They asked the OECD to report to them on the issue. The OECD released a report in 2013 outlining the problems and promised an Action Plan by mid-2013. The latter was published as OECD, Action Plan on Base Erosion and Profit Shifting (OECD 2013), International Organizations• Documentation IBFD, also available at www.oecd.org/ctp/BEPSActionPlan.pdf.
2. The questionnaire and responses, and other relevant documents, are available at www.un.org/esa/ffd/tax-committee/tc-beps.html.

comed by G20 Leaders at their Summit later that month, the OECD proposed a new structured dialogue process, based on the following three interconnected pillars:

(1) direct participation of developing countries and regional tax organizations in the OECD Committee on Fiscal A airs (CFA) and its subsidiary bodies;
(2) regional networks of tax policy and tax administration o cials on the BEPS initiative in ve speci c regions; and
(3) capacity building support through mentoring, and the development of toolkits in collaboration with international regional organizations and developing countries working in the context of the regional networks.[10]

3. Developing Countries• Reactions to the BEPS Initiative

3.1. Introductory remarks

Question 1 (see section 3.2.) and questions 2, 3 and 4 (see sections 3.3., 3.4. and 3.5., respectively) were asked to gain insight into how developing countries perceive both the causes and effects of base erosion and profit shifting in their jurisdictions.

3.2. Question 1

How does base erosion and profit shifting affect your country?

All respondents confirmed that base erosion and profit shifting affected their countries, with most citing the effect on tax revenue as a chief concern. A few respondents noted that they had no formal quantitative measure of the extent of the lost tax revenue; however, they seemed very aware that low effective tax rates applied to income sourced in their countries.

It was noted that one obvious consequence for countries is that the focus of revenue collection moves to consumer taxes that are easier to collect, such as VAT. Similarly, tax authorities direct their operational resources at those taxpayers who cannot move their income, for example, local individual residents together with those entities that do not have the opportunity or, indeed, the resources to engage in tax planning, such as small and medium-sized enterprises (SMEs).

Countries observed that these consequences of base erosion and profit shifting have adverse implications for perceptions of fairness and integrity in their tax systems. This, in turn, undermines voluntary compliance, which is crucial to the effective administration of all income tax systems, including those of developing countries.

It was noted by some that base erosion and profit shifting concerns are particularly pressing for developing countries. This is because of the capital import nature (CIN) of those countries, their reliance on corporate income tax and the extent of foreign ownership of their businesses.

10. OECD,81.058taxt4ti(51 320.063 677.659 9.5872 56.4774)-44 T [(Qu)5.1614-

party transactions. Countries also counted the existence of transactions with tax havens as a relevant risk-profiling

(8) Action 13 … Re-examine transfer pricing documenta-
tion.

Countries were asked if they agreed that the eight select response to base erosion and profit shifting in developing countries.

Countries also identified Action 5 (countering harmful tax practices) as important. This response is consistent with the responses received in relation to question 2 (section 3.3.) that identified the role of tax havens and preferential regimes as key causes of base erosion and profit shifting.

4.5. Question 8

Having considered the issues outlined in the Action Plan and the proposed approaches to addressing them (includin domestic legislation, bilateral treaties and a possible multilateral treaty), do you believe there are other approaches t addressing those practices that might be more effective at th l-

Several countries commented that generally achieving effective implementation of the BEPS initiative depended on obtaining the •buy-inŽ of developing countries. It was proposed that the United Nations, the OECD and the World Bank should provide more technical guidance on gaps in domestic law, tax treaties and transfer pricing guidelines. Another suggestion was that the United Nations should produce its own guidance on the 15 points of the Action Plan. (This has been adopted as part of the mandate of the Subcommittee.) Another idea was to establish a multilat-eral forum along the same lines as the Global Forum on Transparency and Exchange of Information. Other ideas

5. Conclusions

All respondents said that base erosion and profit shifting affected their tax revenues. Over one third said that it distorted competition between domestic, i.e. generally small, and foreign, i.e. generally large, enterprises. Some countries referenced the additional tax burden placed on other taxpayers if MNEs were avoiding tax, and the effects this could have on voluntary compliance and the development of their economies.

Transfer pricing, including the pricing of goods, excessive management fees, royalties, and research and development (R&D), was the most commonly raised base erosion and profit shifting issue. Better transfer pricing guidelines and legislation were seen as the primary tools to address this. High interest deductions on related-party debt and concerns as to excessive debt levels also featured prominently in the responses. In addition, tax havens, preferential tax regimes and treaty abuse were cited as causes of bas erosion and profit shifting.

A lack of information and capacity building were other common themes. The tax authorities in developing nations struggle to establish, grow and up-skill effective international tax teams. Some respondents cited poorly developed EOI networks as being an impediment, while others had networks in place but found that information was not exchanged quickly enough.

All of the respondents agreed that the action items identified by the Subcommittee in the questionnaire as developing nation priorities were important, with disclosure of aggressive tax positions (Action 12) and transfer pricing documentation (Action 13) being of particular concern. These were closely followed by the transfer pricing actions on intangibles (Action 8) and other high-risk transactions, including management fees (Action 10).

Finally, there was less agreement as to whether other action items not prioritized in the questionnaire are nevertheless important to developing countries. However, the avoidance of PE status (Action 7) and the digital economy (Action 1) are the two action items that were most commonly cited in response to this question.