

REGIONAL CONSULTATION ON BASE EROSION AND PROFIT SHIFTING

SEOUL, KOREA, 20-21 FEBRUARY 2014

CO-CHAIRS SUMMARY OF DISCUSSIONS

Mr. Myung-Jin Han¹ and Mr. John Hutagaol² co-chaired the first Regional Consultation on Base Erosion and Profit Shifting (BEPS) for the Asia-Pacific Region, hosted by the Korean Policy Center (Tax Programme). The Co-Chairs have prepared an informal summary of the discussions from the meeting to share with all participants and to feed into the BEPS consultation process. This process will enable the views of Partner countries, and particularly of developing countries, to be taken into account in developing work within the framework of the OECD/G20 BEPS Project.

Introduction

In response to the recognition that BEPS is a global problem which affects domestic resource mobilisation in developing countries, the first of four regional consultation events on BEPS was held in Seoul, Korea, on 20-21 February 2014. The next regional consultation events will take place in Latin America and Caribbean (Colombia/Bogota, 27-28 February), Africa (South Africa/Pretoria, 18-19 March), and for Francophone countries (France/Paris, 25 March).

The event brought together over 50 participants from 22 countries in the Asia-Pacific Region, as well as representatives from regional and other international organisations, including representatives from the UN Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries and the Asian Development Bank. Representatives of international and local business and civil society were present for all but the closed technical discussions. The meeting discussed:

- The nature and impact of BEPS issues for Partner countries in the Asia-Pacific Region, and the challenges faced by these countries in addressing these BEPS issues;
- How Partner countries, and particularly developing countries, can benefit from the implementation of the BEPS Action Plan, taking into consideration their priorities;
- How the international community can most effectively assist and support developing countries to implement measures to address BEPS issues, including capacity building initiatives; and
- How to maintain an ongoing dialogue to ensure that the views of Partner countries are effectively reflected in the current work of the OECD/G20 BEPS Project.

The outcomes of the regional consultations will be discussed at the meetings of the Global Forum on Transfer Pricing and Task Force on Tax and Development, on 26-28 March 2014, and inform the development of the BEPS outputs. They will also feed into the Report to the G20 Development Working Group on the impact of BEPS issues in developing countries, and how the G20 can assist low income countries (LICs) address the BEPS issues and challenges they are faced with. This Report will

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convey LICs' perspectives into the G20 finance track. An ongoing dialogue will then take place as the BEPS Action Plan elements are developed, and the implementation phase begins.

Outcomes of the Meeting

A. Key Messages

1. The meeting observed that the political support in their countries is critical to drive real change.
2. Participants agreed that, in the regional context, the OECD/G20 BEPS Project needs to reflect the balance between the encouragement of foreign investment and the need for domestic resource mobilisation for development. In addition, the relevance and significance of tax incentives for investment was discussed.
3. The meeting highlighted the necessity to advance global standards that would work in the light of future as well as current economic and business development.
4. For developing countries, it is crucial that tax policy measures are capable of implementation, given the current constraints on capacity and access to information. Participants felt that implementation considerations should inform the development of the work on BEPS.
5. Measures to address BEPS by developing countries need to go hand-in-hand with capacity development.
6. Participants recognised that while outside of the scope of the OECD/G20 BEPS Project, the balance between source and residence taxation is significant for developing countries.

B. BEPS issues identified as significant for the Region

Discussions in the meeting indicated that the key action areas for countries in the region include: (i) base erosion through interest deductions and other financial payments (Action 4 of the BEPS Action Plan); (ii) avoidance of harmful tax practices among countries in the region (Action 5); (iii) prevention of treaty abuse (Action 6); (iv) redefinition of the concepts of resident and permanent establishment to align the tax nexus with economic reality (Actions 6 and 7); (v) the clarification of the tax treatment of intangibles, particularly concerning royalties (Actions 8-10); (vi) base eroding payments via management fees and head office recharges (Action 10); and (vii) more effective transfer pricing documentation requirements, including country-by-country reporting, without imposing an onerous burden on business and tax administrations (Action 13).

C. Shared approaches to dealing with BEPS and their effectiveness

Some countries discussed the interaction of the limitation of benefits clause and the main purpose rule in dealing with treaty shopping. Participants discussed the possible implementation of general and specific anti-avoidance rules, including thin capitalisation rules. Many countries are introducing transfer pricing rules, incorporating the arm's length principle. The meeting welcomed the development of shared databases for use across governments.

D. Specific challenges facing developing Countries in addressing BEPS

Country delegates listed the challenges faced including: (i) difficulty in gaining political support for changing legislative structures; (ii) the ability to implement legislation once passed, given the constraints of resourcing, capacity and available information; (iii) in the case of transfer pricing, the lack of comparable information poses specific implementation challenges; (iv) ensuring coordinated actions to counter BEPS in the Region.

E. Building a sustainable dialogue to feed into BEPS work

The meeting considered it essential that the dialogue begun today continues on an ongoing basis for the life of the OECD/G20 BEPS Project. Mechanisms proposed were: (i) the use of an electronic discussion group made up of participants in the meeting; (ii) informal arrangements between countries working together on specific BEPS issues; (iii) an alert and email process to provide participants with the ability to feed into consultations on specific documents and work areas; (iv) a further meeting of the group before the end of the year to assess progress made, feed into ongoing BEPS work and strengthen the policy dialogue within the Region.