

**REGIONAL CONSULTATION ON BASE EROSION AND PROFIT SHIFTING**  
**Bogotá - Colombia, 27 - 28 February 2014**

**CO-CHAIRS SUMMARY**

Diego González Bendiksen (DIAN - Colombia) and Marcio Verdi (CIAT Executive Secretary) co-chaired the first Regional Consultation on Base Erosion and Profit Shifting (BEPS ) in Latin America and the Caribbean (LAC), hosted by the Colombian Tax Administration (DIAN) and co-organised by Colombia, the Inter American Center of Tax Administrations (CIAT) and the OECD. The co-chairs have produced this informal summary of discussions from the meeting to share with all participants and to feed into the BEPS consultation process. This process will enable the views of the countries concerned, particularly those of developing countries, to be considered in the ongoing work within the framework of the G20/OECD BEPS Project.

**Background**

In response to the recognition that BEPS is a global problem that clearly affects domestic resource mobilization in developing countries, the OECD has organised four regional consultation events on BEPS. The first one was held in Seoul on 20-21 February 2014, the second event being the one that brought us together in Bogotá on 27 - 28 February, in this case representing countries and organisations in Latin America and the Caribbean. The following regional consultation events will take place in Pretoria (South Africa), on 18-19 March for African countries, and in Paris on 25 March for Francophone countries.

This event brought together 78 participants from 15 countries within Latin America and the Caribbean, as well as representatives from 10 regional and international organisations including the OECD, the OECD Korea Policy Centre, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the International Monetary Fund (IMF), the Inter American Center of Tax Administrations (CIAT), the G20, the US Agency for International Development (USAID), the International Tax Compact (ITC), the Inter-American Development Bank (IDB), COSEFIN, the German Society for International Cooperation (GIZ) and the Commonwealth of Nations. Representatives of international and local business (BIAC, through its regional and Colombian representatives Repsol, Unilever and the National Industrial Association, ANDI) and civil society (including TUAC, Tax Justice Network (TJN), BEPS Monitoring Group, Global Alliance for Tax Justice and Latindadd) were present for all but the closed technical discussions.

The meeting discussed:

1. The overall situation of tax systems in the LAC region, with specific attention to issues of financial sufficiency, equity, informality and tax fraud;
2. The diversity of the countries in the region, both in levels of economic development and administrative capacity;
3. The implications of Base Erosion and Profit Shifting (BEPS) practices for LAC countries, as well as the particular challenges they face when dealing with BEPS issues;
4. The challenges for countries in the region when implementing the new standards coming out of the BEPS Action Plan, both in terms of incorporating them into their legal systems, and in the practical implementation by administrations;

5. The extent to which the international community can contribute resources and assistance to developing countries to support the implementation of effective measures to tackle the problems of BEPS; and

6. How countries in the region could organise themselves in order to maintain an ongoing dialogue beyond this conference and to ensure that the views of the countries concerned are effectively reflected in the continuing work of the OECD/G20 BEPS Project.

The outcomes of this, along with the other regional consultations, will be considered at the Global Forum on Transfer Pricing and at the meeting of the Task Force on Tax and Development, to be held in Paris on 26-28 March 2014 as well as at other meetings of the subsidiary bodies of the Committee on Fiscal Affairs. They will also feed into the Report of the Working Group on Development commissioned by the G20 on the impact of BEPS issues in developing countries and how mechanisms available to the G20 could help low income countries (LICs) address the BEPS issues and challenges they are faced with. This report is crucial as it conveys the perspectives of the LICs to the G20 finance ministers. This dialogue will continue as the various elements of the BEPS Action Plan develop, and the implementation phase begins.

## **Outcomes of the Meeting**

### **A. Key messages:**

1. Budgetary shortages and domestic resource mobilisation are indeed affected by BEPS, but the problem is wider. Harmful tax competition to attract foreign investment, difficulties in effective exchange of information, the issue of informality, capacity constraints and other institutional factors indicate that it is necessary to further align fiscal policies beyond BEPS alone.

2. The issues discussed during the meeting were of a highly technical nature, but the success of these measures will be determined not only by the technical accuracy of the solutions proposed, but also by the political consensus on the need for reforms. This is a task which concerns all of us.

3. Inequalities in the level of development of tax systems in the region, with particular emphasis on international taxation, indicate that this problem is multidimensional and, therefore, the solutions must address all situations. Tax treaty abuse, for example, is a concern for countries with a relatively extensive treaty network, while for others the concern is precisely the absence of such a network.

4. For developing countries, it is crucial that tax policy measures resulting from the project are capable of practical implementation, given the current constraints on capacity and access to relevant information. Participants felt that implementation considerations should inform the development of the work on BEPS.

5. The application of the standards to address BEPS can only begin in developing countries when sufficient capacity within their tax administrations has been developed. This process is costly and requires extensive efforts at a domestic level, along with support from donors, international organisations and other stakeholders.

6. Some participants, while recognising that this would go beyond the scope of the BEPS project, indicated that further discussions could be expanded to other international fiscal principles, such as the allocation of taxing rights between residence and source states.

## **B. Issues identified as important to the Region**

Discussions during 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) Countering harmful tax practices among countries in the region (Action 5).
- (iii) Prevention of treaty abuse (Action 6) not only subjectively (treaty shopping) but also objectively (rule shopping), the interaction of anti-abuse provisions in international and domestic instruments; and redefining the concept of permanent establishments to align the tax nexus with economic substance (action 7).
- (iv) Prevention of abuse in the taxation of the extractive industries and natural resources, and the analysis of legislative measures adopted by countries in the region, amongst them the so-called sixth method.
- (v) Clarification of the tax treatment of intangibles, particularly concerning royalties (actions 8-10).
- (vi) Base eroding payments via head office charges (Action 10).
- (vii) More effective and standardised transfer pricing documentation, including country-by-country reporting, without imposing an onerous burden on business and tax administrations (Action 13).
- (viii) Hybrid financial derivatives, in particular regarding swaps related to commodities (Action 2).
- (ix) Interaction of CFC rules with the application of double taxation agreements (Action 3).

Participants also identified other issues, such as:

- (x) Best practices in the issuance of tax residency certificates for the application of double taxation agreements.
- (xi) The need to ensure that the legal infrastructure and administrative arrangements are in place to implement the new standards on BEPS.
- (xii) The importance of effective exchange of information, including automatic exchange.
- (xiii) Strengthening capacity in tax administrations with appropriate training and adequate staff retention rates.
- (xiv) Reviewing the tax penalties system to prevent avoidance and evasion activities.

## **C. Specific challenges faced by developing countries in addressing BEPS issues**

Country delegates listed the following challenges:

- Taxation of extractive industries, including the role of intermediaries and financial institutions.

- Difficulties in gathering political support for policy changes.
- Capacity constraints within administrations for implementing the new standards given limited resources and information available.
- Lack of comparable data, in particular on transfer pricing, poses specific implementation challenges.
- Ensuring coordinated actions to counter BEPS in the region.

#### **D. Building a sustainable dialogue to inform BEPS discussions**

The meeting considered it essential that the dialogue continues through the duration of the OECD/G20 BEPS Action Plan. Mechanisms proposed were:

- To build on existing institutional channels (e.g. between Central American countries) and work together on specific BEPS issues.
- A further meeting of the group, possibly back-to-back with the CIAT Technical Conference in Santiago de Compostela (Spain) during the week of 29 September to 2 October, in order to assess progress, contribute to ongoing work on BEPS and to strengthen policy dialogue in the region.
- To facilitate policy dialogue on BEPS within countries in the region involving, as far as possible, members of the legislative assemblies and the judiciary powers.
- To leverage on LAC countries which are BEPS Associates (Argentina, Brazil, Colombia) and OECD members (Mexico, Chile) as another mechanism for conveying the concerns of the region as a whole in discussions of the new standards.
- To respond to the OECD questionnaires circulated by regional organisations, in particular CIAT, in order to contribute towards a detailed assessment of the needs and the best methods to solve the BEPS problems in the region.
- To invite participants to take part in public consultations on specific documents as requested by the various work areas.

Finally, participants stressed the importance of carrying-out technical events in the region to create greater awareness and understanding of BEPS issues and the ongoing work in this area within the frameworks of tax administrations and Ministries of Finance. The first event of this nature could take place in Mexico between 29 September and 3 October.

Thank you very much for your contribution to the dialogue.

Diego González-Béndiksen and Marcio Verdi, co-chairs.