

The BEPS Project and Developing Countries: from Consultation to Participation

Base Erosion and Profit Shifting (BEPS) is a global problem which requires global solutions. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs).

DEVELOPING COUNTRIES AND BEPS

Taxation plays a central role in promoting sustainable development, and developing countries face significant challenges in developing their tax capacities and mobilising domestic resources. Engagement of developing countries in the international tax agenda, including on BEPS, is therefore important, in particular to ensure they receive appropriate support to address the specific challenges they face.

In the first year of the Project, more than 80 developing countries and other non-OECD/non-G20 economies have been consulted through four in-depth regional consultations and five thematic global fora. The input received from developing countries has been fed directly into the development of the BEPS Action Plan through the technical groups carrying out the work on BEPS (for example on the template for Country-by-Country reporting, or the work on treaty abuse and the considerations for entering into tax treaty relationships).

This engagement has also been crucial in identifying the specific challenges and priorities of low-income countries. These priorities, and how the G20 can provide support to address them, was the subject of a dedicated [two-part Report](#) prepared by the OECD under a mandate from the G20 Development Working Group, and it was welcomed by the G20 Finance Ministers at their meeting in Cairns in September 2014.

The BEPS Project priority areas identified by developing countries include limiting base erosion via interest deductions and other financial payments (Action 4 of the BEPS Action Plan), preventing tax treaty abuse and the artificial avoidance of Permanent Establishment status (Actions 6 and 7), transfer pricing, in particular base eroding payments (Actions 8, 9 and 10), and transfer pricing documentation and country-by-country reporting (Action 13). Political support and capacity building to address BEPS issues have been identified as key cross cutting challenges for developing countries, particularly as the implementation of the BEPS measures begins.

The lack of transfer pricing comparables data and the granting of wasteful tax incentives have also been identified as areas of particular concern for developing countries. These issues are not part of the BEPS Project itself and are the subject of specific mandates for further analysis from the G20 and ongoing work through the [Task Force on Tax and Development](#).

The BEPS Project in a nutshell

In an increasingly interconnected world, national tax laws have not always kept pace with how global corporations have developed nor with the rise of the digital economy, leaving gaps that can be exploited to generate double non-taxation. This undermines the fairness and integrity of tax systems. [The first set of BEPS measures](#) and reports were released in September 2014. Combined with the work to be completed in 2015, these measures will give countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time give business greater certainty by reducing disputes over the application of international tax rules, and standardising requirements. The OECD/G20 BEPS Project is leading to concrete change and is now strengthening the engagement and participation of developing countries.

STRENGTHENING THE INVOLVEMENT

OF DEVELOPING COUNTRIES

IN THE BEPS PROJECT

In September 2014, the G20 Finance Ministers asked the OECD to build on its current engagement with developing countries and develop a new structured dialogue process, with clear avenues for developing countries to work together and directly input into the G20/OECD BEPS Project. The OECD, working with other International Organisations and regional tax organisations, has also been mandated to develop tools to translate the BEPS Action Plan into practical support for lower capacity developing countries, to be delivered in 2016. The new structured dialogue process on the BEPS Project is based on three pillars.

1. Direct participation in the Committee on Fiscal Affairs and its subsidiary bodies

2. Regional Networks of tax policy and administration officials

3. Capacity building support

1

Developing countries from a cross-section of regions and per capita income-levels, will be invited to participate in the Project by attending the meetings of the Committee on Fiscal Affairs (CFA, the key decision-making body of the BEPS Project) and of its subsidiary bodies (the working groups responsible for carrying out the technical work). Regional tax organisations ATAF (African Tax Administration Forum) and CIAT (Inter-American Centre for Tax Administration) have also been invited to participate in the CFA and all technical working groups. IMF, the WBG and the UN already participate in these meetings.

Through this direct participation, developing countries will be able to provide input at the working and decision-making levels of the BEPS Project, and to ensure that the specific concerns and context of developing countries are taken into account in the development of solutions to counter BEPS. Not only will developing countries be able to directly input and gain an improved understanding of the BEPS process, but OECD members and BEPS Associates will also be exposed first-hand to accounts of the specific perspectives of, and challenges faced by, developing countries.

2

Leveraging on the success of the regional consultations in 2014, regionally-based networks of tax policy and administration officials are being set up for an ongoing and more structured dialogue process with a broader group of developing countries. Countries participating in the BEPS Project will play a key role in these networks acting as a direct conduit to the BEPS Project on the issues and comments raised by their colleagues through the regional networks.

The networks are to be organised based on 5 regional/linguistic groupings, in close co-operation with other international organisations and relevant regional tax organisations:

- **Africa**, with ATAF (African Tax Administration Forum)
- **Latin America and the Caribbean**, with CIAT (Inter-American Centre of Tax Administration)
- **Asia**, in co-operation with SGATAR (Study Group on Asian Tax Administration Research)
- **French-speaking countries**, in co-operation with CREDAF (*Centre de rencontre des administrations fiscales*)
- **Central Europe and Middle East**, in co-operation with IOTA (Intra-European Organisation of Tax Administrations)

Supporting capacity building in developing countries on BEPS issues is a priority. The regional networks will play an important role in the development of toolkits needed to support the practical implementation of the BEPS measures and the other priority issues for developing countries (tax incentives and comparables) which are outside the BEPS Project. Each will be a forum for interested developing countries to discuss participation in the work on the multilateral instrument under Action 15 of the BEPS Project.

In addition to the regional networks, the [OECD Global Relations Tax Programme](#) and the [Tax and Development Programme](#) provide additional platforms for engagement and dialogue on BEPS issues – through demand-led training events and bilateral country programmes which help put in place stronger international tax rules and administrative processes. All these initiatives will be coordinated with the IMF, the WBG and the UN to ensure effective and efficient support to developing countries.

Countries Views

"Jamaica is pleased to be a participant in the BEPS project. It is our hope that the work of the OECD's Committee of Fiscal Affairs and the various technical working groups will allow for meaningful participation of developing countries and that the outcome of this project will be workable and applicable solutions, which can lead to the stimulation of sustainable economic growth worldwide, underpinned by the pillars of greater levels of tax compliance within states and the creation of a global economic environment which will allow for increased economic viability of developing states."

"Kenya is committed to getting directly engaged in the BEPS process. As an initial step, we have joined the ATAF working Group on BEPS and are building capacity in this area. We are convinced that by being engaging in BEPS processes, we shall be able to address the real issues that have been exposed by the various TP audits we have conducted that have made it evident that BEPS is not a perception but a reality. In the circumstances we shall be more than happy to be quoted in the press about our joining BEPS."

A **workshop for developing countries representatives** took place on 10-11 December 2014 in Paris. Officials from fourteen developing countries discussed the content of the BEPS Project, how it is organised and structured, as well as the human and technical resources available to support their participation, such as dedicated contact persons in the Secretariat and the use of secure websites to share relevant materials. A number of developing countries are expected to participate in the CFA meeting of January 2015, alongside the IMF, the WBG and the UN, as well as CIAT and ATAF.

From January 2015, **developing countries representatives will attend the meetings of the relevant subsidiary bodies**, such as Working Party 1 on tax treaties, Working Party 2 on Tax Policy and Statistics, Working Party 6 on transfer pricing, Working Party 9 on consumption taxes, Working Party 11 on aggressive tax planning, the

Forum on Harmful Tax Practices and the Task Force on the Digital Economy.

Regional network meetings are planned for February-May 2015, including the Global Forum on Transfer Pricing in Paris on 16-18 March, followed by a the plenary of the Task Force on Tax and Development entirely dedicated to BEPS issues in the developing country context.

By participating directly in the BEPS Project, developing countries will be able to present their perspectives, participate in the decision-making process, play a leading role in the regional networks and in the development of toolkits needed for the practical implementation of the BEPS outputs.