

LATIN AMERICA AND THE CARIBBEAN REGIONAL NETWORK MEETING ON BEPS PROJECT

LIMA, PERU, 26-27 FEBRUARY 2015

CO-CHAIRS' SUMMARY OF DISCUSSIONS

Mr. Richard Llaque¹ and Mr. Marcio Verdi² co-chaired the Latin America and the Caribbean Regional Network Meeting on the BEPS Project, hosted by Superintendencia Nacional de Aduanas y Tributos - SUNAT. The Co-Chairs prepared this informal summary of the discussions of the meeting which was shared with all participants.

The objective of the meeting was to feed the views of developing countries into the BEPS work and support the development of toolkits to assist implementation of BEPS solutions. This Regional Network Meeting was part of a new structured dialogue process in Latin America and the Caribbean which will enable the views of Countries, and particularly of developing countries expressed at this meeting, to be taken into account in the ongoing discussions in the Global Fora, Task Force on Tax and Development and Working Party meetings relating to the BEPS Project and the implementation of solutions to counter BEPS.

The Meeting

This Regional Network Meeting was held in Lima, Peru, on 26-27 February 2015 and focused on the following key priority areas identified by the Region at the regional consultation on BEPS that took place in Bogota in February 2014:

- Interest Deductibility (Action 4)
- Transfer Pricing Risk and recharacterisation (Actions 8-10)
- Digital economy (Action 1)
- Automatic Exchange of Information
- Commodities transactions (Action 10)
- Transfer Pricing documentation and Country-by-Country Reporting (Action 13)

The event brought together 89 participants from 14 economies in the Latin America and the Caribbean³, as well as representatives from regional and international organisations, including the World Bank Group, CIAT, COSEFIN, EUROsociAL, SECO Lima and GIZ El Salvador. From the list of participating countries, seven economies in the Region participate directly in the BEPS project as OECD Members (Mexico, Chile), G20 Members (Argentina, Brazil), Participants to the CFA (Colombia, Costa Rica) and Invitees to the BEPS Project (Peru). Other countries expressed their agreement in participating through regional consultations and with CIAT as a speaker through its direct participation at the CFA meetings.

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³ Argentina, Belize, British Virgin Islands, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Guyana, Mexico, Panama, Peru, Sint Marteen, Spain

The meeting discussed:

- The BEPS issues identified as key priorities for economies in the Latin America and the Caribbean Region, and in particular: a) 2014 deliverables, b) ongoing 2015 deliverables with a focus on recently published BEPS discussion drafts, and c) toolkits and implementation strategies;
- How Countries can effectively provide their views into the BEPS Project and other related work;
- How Countries can ensure that the development of Toolkits can assist them to implement solutions to counter BEPS.
- Representatives of international and local business, and civil society were present in two plenary sessions and shared their perspectives with tax officials.

A. Key Messages

1. The meeting highlighted the importance to address BEPS, which has become a key political issue in the region.
2. Participants welcomed the new OECD/G20 strategy to strengthen the involvement of developing countries into the BEPS project, under the G20 mandate, making the entire process more inclusive and providing an opportunity to enhance cooperation within the Region.
3. The meeting emphasized that active engagement in the BEPS process is important to ensure a level playing field between MNEs and domestic businesses.
4. It was recognized the importance of Regional meetings as opportunities to allow countries that cannot participate directly in the process to provide their input and to express their views, which will then be delivered by CIAT.
5. Need to engage all stakeholders, including the views of business and civil society, in looking for solutions to counter BEPS. Regional coordinated approaches, especially in the area of cross-border commodity transactions and transfer pricing documentation were considered as the key priority area by participants.
6. The meeting emphasized the importance of LAC tax administration officials with stronger technical skills and the need to obtain political support to implement relevant tax measures.
7. Participants highlighted the need to have access to better and useful tools to implement BEPS measures effectively.
8. Aside from being implemented, Toolkits need to be practical and effective.

B. Discussion on relevant Action Items for the Region

1. *Interest Deductibility (Action 4)*: Economies recognized the need to tackle BEPS situations caused by the lack of coordinated and effective rules on the allocation of interest expenses. Some countries have taken unilateral measures to tackle debt structures deemed abusive, hence there is a need for coordinated measures to be put in place.

2. *Transfer pricing issues (Actions 8-10)*: The general approach towards aligning taxation with economic value creation was supported by participants and some economies requested assistance in building capacity. Countries stressed the need to have access to more and better information for transfer pricing audit purposes as well as training programmes. Issues highlighted in the area of transfer pricing showed interrelations with other topics discussed in other sessions, such as toolkits for coping with lack of comparables and cross-border commodity transactions, as well as tax incentives granted to multinational groups.

3. *Digital economy (Action 1)*: Even though participants recognized that experience is limited in the region, they highlighted the need to address the issue and to create awareness. They also recognized that digital economy raises issues that go beyond BEPS such as nexus and role of data.

4. *Automatic Exchange of Information*: Countries showed a strong interest in developing appropriate EOI mechanisms and some stated their interest in getting aligned with the standard. Countries stated their concerns on their administrative capacity to comply with the standards.

5. *Transfer pricing documentation (Action 13)*: Participants welcomed the three-tiered approach proposed, with particular regard to the Country by Country reporting, and emphasized the need for consistency, confidentiality and appropriate use of the reported information for risk assessment purposes. They also highlighted that further considerations are needed on i) how tax administrations can get access to the information contained in CbC reports, ii) the importance for the Region to assess in implementation phase whether the actual content of the CbC is satisfactory and iii) to evaluate if the proposed threshold for filing is appropriate for regional MNE groups.

6. *Commodities transactions*: Participants discussed the particular issues that Latin American economies face in relation to cross-border commodity transactions. An important part of the discussion concerned the experiences of some administrations in applying the so-called “sixth method” and approaches to find effective solutions to address the issue. Additionally, delegates were interested in having more discussions to understand the key features of the sixth method (i.e., transfer pricing method, special measure, anti-abuse provision, etc.). Finally, participants highlighted their interest in providing input in the development of toolkits. Comments were particularly focused on two main areas considered relevant: i) need for guidance and clarification on the use of clear ways to arrive at an appropriate transfer pricing and ii) on deemed pricing date measures to avoid arbitrage by MNEs. It was recognized the importance of this part of work for the entire region.

7. *Tax Incentives and Comparability*: Participants welcomed the G20 DWG mandate to the OECD, IMF, World Bank Group and UN to collaborate on developing toolkits to address difficulties in accessing comparable data and on tax incentives and stressed the importance of receiving support and assistance in these areas that are closely related. They also considered the proposed scope

satisfactory for their needs and highlighted the new OECD structured dialogue process as an effective way to provide their input/feedback in the preparation of the toolkits.

The World Bank Group highlighted its involvement in the G20 DWG mandate on the work on Tax Incentives. The WBG expressed several issues and concerns such as whether tax incentives are appropriately granted, if they achieve the expected benefits as well as the need for transparency and monitoring systems to assess if they are obtaining the appropriate results.

8. Business and NGO perspectives:

Representatives from the regional and local business communities recognized the need to implement measures to tackle BEPS issues, but recommended to develop commercial awareness to ensure an appropriate application by tax administrations of the related measures.

Representatives from civil society and NGOs expressed appreciation for the involvement in the Regional meetings as well as concerns for lack of their involvement in the entire process. They also expressed the need for United Nations to create specific bodies to make sure that the views of the developing countries would be fully reflected in the work.

9. Representative from CIAT highlighted the great and unprecedented efforts of the OECD in strengthening the involvement of developing countries in the process and, in particular, of the Latin America and Caribbean region. They also recommended countries to take the opportunity to express their views and perspectives also considering the presence, in various roles, of South American OECD members, associates, invitees, etc., in the process.

C. Next Steps: Strengthening the engagement of Countries in the BEPS Project and related work

The meeting considered that the Countries in the region should strengthen their engagement in the BEPS Project and related work through various channels:

- To utilise this Regional Network to share updated information on the progress of the various areas of work of the BEPS Project, including providing input into the development and implementation of toolkits, and to take part in public consultations on discussion draft on BEPS Deliverables as appropriate.
- To directly participate in the Committee on Fiscal Affairs and its subsidiary bodies as Members, Associates, Participants or Invitees to the meetings, and in the Global Forum on Tax Treaties and on Transfer Pricing, and the Task Force on Tax and Development.
- To take part in the Global Relations Programme and the Tax and Development Programme to ensure capacity building for the implementation of measures.
- Engagement with regional multilateral organisations, such as CIAT to provide input on the BEPS Project. In this sense, countries expressed their agreement in having CIAT to participate as a regional speaker in several meetings.

The next steps in delivering the perspectives of this region into the technical process will take place: 1) at the Global Forum on Transfer Pricing and the Task Force on Tax and Development to be held in Paris on 16-18 March 2015; and 2) through direct participation of economies in the region in the Committee on Fiscal Affairs (CFA) and its subsidiary bodies and 3) in the consultations regarding the development of toolkits.

The input of this Regional Network Meeting will also be fed into the development of toolkits as part of the implementation phase of solutions to counter BEPS. The next Regional Network Meeting will take place in October 2015 to discuss the outputs of the BEPS Project and the further development of the toolkits and other issues related to the implementation of the measures to counter BEPS.