

REGIONAL NETWORK MEETING & GOVERNMENTAL WORKSHOP ON BEPS IN LATIN AMERICA & THE CARIBBEAN

SAN JOSE, COSTA RICA, 17-18 NOVEMBER 2015

CO-CHAIR'S SUMMARY

Mr. Carlos Vargas Duran¹ and Mr. Ubaldo Gonzalez de Frutos² co-chaired the Regional network meeting on BEPS for Latin America and the Caribbean (LAC), hosted by the Ministry of Finance of Costa Rica. This summary of the discussion has been prepared by the co-chairs, who shared it with all participants.

The objective of this meeting was to obtain comments and feedback from countries and from stakeholders representing the business community and the civil society, about the publication of the BEPS Package in October 2015 and the development of toolkits to implement the BEPS measures. The objective was also to focus on the LAC countries' specific needs to understand how to adapt the implementation of the BEPS outcomes.

This meeting follows the last Regional network meeting organised in Lima, Peru, on 26-27 February 2015, as a part of the strategy for a better involvement of developing countries in the BEPS related work.

The meeting

The meeting took place in San José, Costa Rica, on 17-18 November 2015. In their opening remarks, Fernando Rodriguez Garro, Vice-minister of Taxes of Costa Rica, Gonzalo Arias, International cooperation and taxation director at the Inter-American Center for Tax Administration (CIAT) and Alberto Barreix, Principal technical leader at the Inter-American Development Bank (IADB), welcomed the participants of the meeting which focused on the following topics:

- The presentation of the final BEPS Package and its 15 actions, in particular those which have been identified as important by the economies of the region.
- The challenges and opportunities of the BEPS implementation phase, including the areas where follow-up work is needed, and the ideas about the best way to design an inclusive framework for all interested countries on an equal footing.
- How the countries can ensure that the development of the toolkits help them to implement solutions that are workable and viable to tackle BEPS, with separate sessions on tax incentives, lack of comparables data for transfer pricing purposes, transfer pricing documentation and indirect transfers of assets.
- The capacity building initiatives that can benefit the countries in the region.

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- The countries' experiences in implementing reforms, in particular in the area of transfer pricing, transfer pricing documentation and tax incentives.

49 participants representing 16 countries of the LAC region attended to the meeting.

Representatives from the IADB, CARICOM, CIAT, COSEFIN and the IMF also participated, as well as representatives from the civil society (BEPS Monitoring Group, Latindadd, University of Uruguay and of San Martin de Porres) and the business community including BIAC, Deloitte and the Grupo Verona. The comments made by the NGOs and the business were taken into account during the discussions within the governmental workshop on the second day.

A. Key messages

1. Good perception of the outputs of the BEPS Project. The participants considered that the BEPS Project would help to consolidate their legislations to fight against abuses and tackle aggressive tax planning strategies. However, they indicated a need to adapt the implementation of the measures to the context of each country.

2. Important challenges in translating the BEPS outcomes in the domestic tax systems. Not all countries have the same ability to incorporate these measures in their systems. Less developed countries need a step by step approach and this implies a risk for the consistent implementation of BEPS as well as for allowing countries to benefit from BEPS measures. Those risks can be mitigated through assistance and support to LAC countries.

3. Political economy of tax reform. Regardless of their level of capacity, countries in the region have traditionally experienced important difficulties in implementing significant tax reforms. Nothing suggests that the BEPS measures will be easier or quicker to implement, although there is a clear will to renovate the domestic rules to comply with the BEPS recommendations.

4. Particular attention to the work performed with the toolkits. The participants discussed various issues in relation with tax incentives (especially the tax free zones), the mineral pricing issues and the lack of comparables. Countries consider that these topics are well aligned with their needs.

5. Capacity building programs. It is necessary to improve LAC countries tax administrations' capacities to deal with BEPS issues, in particular in relation to transfer pricing, in order to reduce the risk of uncoordinated development and also raise awareness of these issues in the media. Therefore it is necessary that capacity building actions are targeted at the senior level to facilitate the decision-making on BEPS issues.

6. Comments on the implementation of the transfer pricing rules. It will be necessary to monitor the implementation and the workability of the simplified rules on low-value added services, where two elements are equally important, the mark-up is but also the cost base of such services. It is also important to improve capacity on the valuation of intangible assets. About the country-by-country reporting, the 750 million thresholds is considered as relatively high and could be an obstacle to the analysis of risks about domestic multinational enterprises with a lower turnover.

7. Other topics beyond BEPS were discussed, including source / residence. Participants acknowledged the need to keep discussing the allocation of taxing rights in the framework of the OECD and the UN Model Tax Conventions, as well as the Andean Pact and others such as the model

being developed by the ATAF. The persistence of a distribution of taxing rights perceived as inequitable can cause the risk of multiplication of different standards in double tax treaties as well as the multiplication of tax disputes. This debate was considered as particularly important in the area of the digital economy.

B. Discussion of the different topics

1. General overview of the BEPS Project: a presentation was given on the final reports published in October 2015, where it was underlined that although the goal was to avoid double non taxation, it was not intended to create double taxation either. In their interventions, the participants expressed a keen interest for transfer pricing issues (including the transfer pricing documentation and the country-by-country reports) and for the prevention of the artificial avoidance of the permanent establishment status.

2. The BEPS implementation phase: the main message was the importance of implementing the measures in a way adapted to the region's context. The countries discussed both the challenges and the opportunities, and highlighted the need of a regional cooperation to analyse the impact of the BEPS measures. This cooperation can be more effective with the support of the regional tax organisations such as CIAT, which has conducted various studies about important topics. The protection of the taxpayers' rights was mentioned in relation with the results of the action item 14 on dispute resolution mechanisms, which could bring more legal certainty to corporations.

3. The implementation phase and the challenges beyond BEPS: the participants expressed the need to maintain a platform that would be adequate at the technological level in order to increase capacity building and support to technical assistance to enhance regional cooperation, which could lead to a better harmonization among LAC countries. The representative for the IMF insisted on the need to improve capacity building programs and specific assistance. The participants considered that the tax authorities will have to interact with all stakeholders to build a political consensus both at the domestic and the international levels.

4. Toolkits for implementation: the toolkits being developed by the international organisations have to be based on the experiences of different countries. A recurrent question was about the difficulties to implement the minimum standards when the required information is not available. CIAT insisted on the importance of assessments to ensure that the solutions are proportionate to the level of capacity of each country.

5. Tax incentives: the discussions following the presentation of the report published in November 2015 on the efficiency and the best use of tax incentives focused on free zones, which raise issues *per se*, as well as the abuses of the tax incentives regimes when taxpayers use them under inappropriate circumstances. The representative of COSEFIN called for a better cooperation at the regional level in order to assess the impact and cost of tax incentives.

6. Comparables data and transfer pricing documentation: following the presentation of the state of the work performed by the OECD in cooperation with other international organisations, the issue of finding comparables data for transfer pricing purposes was discussed. The participants shared their experiences and the legislative reforms they implemented to improve the data analysis. The difficulties in the valuation of commodity transactions were also discussed.

7. **Indirect transfers of assets:** after the presentation of available options for a report on indirect transfers of assets, the debate focused on the countries' experiences and the reforms which were implemented in the region consecutively to the occurrence of various abusive cases.

8. BIAC emphasised the **views of the business community**, asking for a level playing field. He indicated that most corporations are willing to adopt a responsible behaviour and want to cooperate with tax administrations. BIAC stressed the need to allow time for corporations to get used to the BEPS environment. BIAC also asked for consistency in the implementation and interpretation among the countries, as well as for better dispute resolution mechanisms in order to increase legal certainty. The participants considered that this would enhance the relationship between corporations and tax administrations, and that there was a need for a better dialogue on BEPS and on tax matters in general. It was acknowledged that a better cooperation would produce results, and that it was necessary to share good practices on this.

9. **The representatives of the civil society** also shared their views and considered that BEPS is a highly important initiative seeking equity in tax matters, but also that it will require efforts in terms of human resources and equipment, which are much needed in developing countries. The lack of good quality information is also an issue for these countries, as well as the lack of transparency in the granting, monitoring and the assessment of tax incentives, which constitute a main cause of BEPS among developing countries. A better cooperation among countries is required to address the manipulation of transfer prices and to implement risk assessment models. Latindadd also called for a closer coordination of economic and tax policies, noting that the regional network on BEPS is useful in this regard.

Next steps

The participants confirmed their interest in the Regional network and called for new meetings in 2016. The OECD Secretariat expressed its willingness to keep dialoguing with the countries in the region, in particular to facilitate experience sharing through case studies and best practices related to the work being performed on the toolkits. The participants also expressed a strong interest in being involved in the inclusive framework for the implementation of the BEPS Project, both to raise awareness at the political level and to facilitate the dissemination of knowledge and of solutions to tackle BEPS.