

## Comments from Brazil

### Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries

Developing countries are invited to provide feedback by answering the following questions. Feedback (and any questions about the feedback requested) should be sent to [taxffdoffice@un.org](mailto:taxffdoffice@un.org). The deadline for responses is 18 April 2014.

1. How does base erosion and profit shifting affect your country?

Answer:

The base erosion and profit shifting practices constitute a serious threat to fair competition, and generate negative impact on tax revenues. Such practices are generally used by large taxpayers. These practices also cause an increase in the tax regressiveness compared to other taxpayers who can not relocate their profits to low-tax jurisdictions. Due to this regressiveness, as a consequence, there is an increase on the tax burden on other taxpayers' impact the country's economic development.

2. If you are affected by base erosion and profit shifting, what are the most common practices or structures used in your country or region, and the responses to them?

Answer:

The most common practices adopted in Brazil leading to the tax base erosion and profit shifting to low-tax jurisdictions or jurisdictions that do not permit access to information regarding the capital stock structure, ownership of assets or rights or to the economic transactions entered into between the parties are: (i) fictitious prices in import and export operations of goods, services and rights between related companies (transfer pricing); (ii) corporate arrangements; (iii) artificial indebtedness between companies of the same group to generate undue costs on Brazilian companies in the mutual operations; (iv) fictitious transactions with residents in tax havens or under privileged tax regimes, as well as with jurisdictions which imposes restrictions to exchange relevant information with the Brazilian tax administration; (v) artificial transfer of tax residence to avoid the Brazilian tax.

In order to combat these practices, in general approach, Brazilian law limits deduction royalties and establishes withholding taxes on payments related on payments related to royalties and services, to avoid double non-taxation.

Additionally, Brazil has implemented legal provisions such as: (i) transfer price controls; (ii) thin capitalization rules; (iii) increased withholding income tax rate at source in case of transactions with low-tax jurisdictions or that not transparency jurisdictions; (iv) impose additional requirements to allow outgoing deductibility in transactions with tax haven or

under privileged tax regime residences; (v) predictions limits for transfer of tax residence of Brazilian taxpayers to country or dependency with tax havens or under privileged tax regimes, as well as with jurisdictions which imposes restrictions to obtain relevant information to Brazilian tax administration.

3. When you consider an MNE's activity in your country, how do you judge whether the MNE has reported an appropriate amount of profit in your jurisdiction?

Answer:

MNE's activity in Brazil has the same treatment as that of Brazilian taxpayer. The Brazilian tax administration has risk analysis tools to identify taxpayers who do not comply with the tax obligation. Once identified, the taxpayers are subjected to tax audit procedures for the tax assessment and collection. Additionally, the Brazilian tax administration applies the transfer prices rules in transactions between related companies.

4. What main obstacles have you encountered in assessing whether the appropriate amount of profit is reported in your jurisdiction and in ensuring that tax is paid on such profit?

Answer:

The main obstacle are the lack of effective exchange of tax information and of specific rules related to digital economy.

The Subcommittee have identified a number of actions in the Action Plan that impact on taxation in the country where the income is earned (the source country), as opposed to taxation in the country in which the MNE is headquartered (the residence country), or seek to improve transparency between MNEs and revenue authorities as being particularly important to many developing countries (while recognising that there will be particular differences between such countries). These are:

- Action 4 – Limit base erosion via interest deductions and other financial payments
- Action 6 – Prevent Treaty Abuse
- Action 8 – Assure that transfer pricing outcomes are in line with value creation:
  - intangibles
- Action 9 – Assure that transfer pricing outcomes are in line with value creation:
  - risks and capital
- Action 10 – Assure that transfer pricing outcomes are in line with value creation
  - with reference to other high risk transactions (in particular management fees)
- Action 11 – Establish methodologies to collect and analyse data on BEPS and the actions to address it
- Action 12 – Require taxpayers to disclose their aggressive tax planning
  - arrangements
- Action 13 – Re-examine transfer pricing documentation

5. Do you agree that these are particularly important priorities for developing countries?

Answer:

Yes, despite the importance of all actions in the Action Plan.

6. Which of these OECD's Action Points do you see as being most important for your country, and do you see that priority changing over time?

Answer: The most important actions are # 4, 8, 9, 10, 12 and 13.

7. Are there other Action Points currently in the Action Plan but not listed above that you would include as being most important for developing countries?

Answer: Yes, there are Actions #1 (Address the tax challenges of the digital economy), # 3 (Strengthen CFC rules), #5 (Counter harmful tax practices more effectively, taking into account transparency and substance) and # 7 (Prevent the artificial avoidance of PE status).

8. Having considered the issues outlined in the Action Plan and the proposed approaches to addressing them (including domestic legislation, bilateral treaties and a possible multilateral treaty) do you believe there are other approaches to addressing that practices that might be more effective at the policy or practical levels instead of, or alongside such actions, for your country?

Answer:

Additionally to the issues outlined in the Action Plan, we believe that the constant improvement of risk analysis tools to detect abusive practices is key to minimize the negative effects on the tax base.

9. Having considered the issues outlined in the Action Plan, are there are *other* base erosion and profit shifting issues in the broad sense that you consider may deserve consideration by international organisations such as the UN and OECD?

Answer:

Not for now.

10. Do you want to be kept informed by email on the Subcommittee's work on base erosion and profit shifting issues for developing countries and related work of the UN Committee of Experts on International Cooperation in Tax Matters?

Answer:

Yes, please send to the following:

Jorge A. D. Rachid <[Jorge.Rachid@receita.fazenda.gov.br](mailto:Jorge.Rachid@receita.fazenda.gov.br)>

Flávio A. G. M. Araújo <[Flavio.Antonio-araujo@receita.fazenda.gov.br](mailto:Flavio.Antonio-araujo@receita.fazenda.gov.br)>.

Do you have any other comments you wish to share with the Subcommittee about base erosion and profit shifting, including your experience of obstacles to assessing and then addressing the issues, as well as lessons learned that may be of wider benefit?

Answer:

There are no comments at the moment.

Additionally, the Secretariat of the Federal Revenue of Brazil (RFB) would like to suggest, if possible, the following modifications in Annex – description of OECD Action Plan on BEPS:

I – Comment of Action 3 (page 9):

The RFB suggests change: "These rules typically treat certain types of the foreign company's income (generally this is limited to passive income such as royalties, interest, dividends)" TO "These rules typically treat certain types of the foreign company's income (**usually, but not limited**, passive income such as royalties, interest, dividends)".

At the end of paragraph 5 add: "However, the inclusion of active income should be considered if a CFC rule target long-term deferral on all types of income."

II – Comment of Action 4 (page 10):

The RFB suggests the addition at the end of last paragraph: "A withholding tax on interest payments can be a solution to limit the effects of the base erosion via interest deduction"