

Questionnaire

Countries' experiences regarding base erosion and profit shifting issues

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. The deadline for responses is 8 August 2014.

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

The current legal framework of Chile to counteract BEPS situations is still narrow compared to other countries' legislation. The lack of a General Anti-avoidance Rule and CFC rules together with only limited specific anti-avoidance measures and a formalistic legal culture imply that Chilean tax administration faces more difficulties to address the complexity of international tax planning. In this context, the risks of Multinational companies being able to erode Chilean tax basis and to shift profits to low or non-tax jurisdictions are high.

Chile is participating in the work carried out by the OCDE and the G20 on BEPS, and we very much welcome the UN's efforts to tackle this problem. We expect to benefit from the results of such project (recommendations, new model provisions, multilateral conventions, etc.). In this context, one of the main purposes of a bill, which is currently under discussion in Chilean Congress, is to update anti-evasion and anti-avoidance tools so that the Chilean tax administration will be better prepared to react and cooperate on these global matters.

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?

Abuse of transfer pricing, use of tax havens and harmful preferential regimes, intercompany transfers of unjustified costs (interest deductions, royalty payments, service payments).

Chile has recently improved its transfer pricing legislation and the Chilean tax authority has invested important resources in order to improve its technical capability to address this problem, however the experience is still limited.

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?

There are no special mechanisms for such a judgment, but the general legal tax rules for determining and auditing tax liability in Chile.

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?

It is difficult to obtain information from MNE country by country, so that to be able to judge if the taxation in Chile has been "appropriate".

The lack of transparency and exchange of information with low or none tax jurisdictions is a great obstacle. However, Chile is part of the Global Forum on Transparency and Exchange of Information and in such context is improving its standards and networks.

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?

Yes

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?

Action 4, Action 6, Action 11 and Action 12. If we are able to tackle those problems perhaps action 8 will have a higher priority.

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?

Action 3 referred to a minimum standard for CFC rules.

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?

Alongside the abovementioned actions, improving transparency and exchange of information networks is crucial to face a global problem such as BEPS.

It is also important that countries with more experience on counteracting BEPS provide technical assistance to developing countries when implementing the actions of the plan.

Considering that the public reputation of MNE is at stake, to include the BEPS concern on the corporate governance context including transparency and to enhance the relationship between tax authorities, tax intermediaries and taxpayers may be also useful measures.

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?

Perhaps there are other parts of the tax Models that could be reviewed in order to ensure a fair balance of taxing rights between source and residence country.

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?

Yes.

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?

No.