

Zambia's Tax Administration Response to the BEPS Questionnaire regarding Country experiences with 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 taxffdooffice@un.org. The deadline for responses is 8 August 2014.

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

It affects the country significantly through reduced tax revenue payments, increase in the tax burden on easy to collect taxes and creates an atmosphere of unfairness as some companies are paying more taxes than others. This has the potential of negatively affecting voluntary compliance.

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?

The most common practices and structures include;

- **Tax treaty abuse especially through treaty shopping,**
 - **Profit shifting through high interest, royalty, management and consultancy fee deductions,**
 - **The avoidance of Permanent Establishment creation by tailoring activities and contracts in such a way that the activities cannot be deemed/create a Permanent Establishment.**
- **Base erosion through creation of new companies to enjoy special tax incentives that are given in selected sectors on new investments.**

The responses include the following:

- **Capacity enhancement through creation of a transfer pricing unit and capacity building of staff in international taxation.**
 - **Strengthening of Transfer pricing legislation as well as introduction of transfer pricing documentation rules.**
 - **Re-negotiation of old tax treaties that are been used as vehicles of BEPS and ensuring that new tax treaties have appropriate anti-treaty abuse.**
 - **strengthening of domestic anti-abuse legislation**
 - **Rationalising of tax treaty incentives and scaling down on tax holidays.**
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?

By looking at the nature of their business compared to similar businesses in the same industry. By looking at composition of their capital and also the amounts of the expenses as well as the level of related party transactions.

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?

The main obstacle is availability of such comparative data and determining precisely whether there is transfer pricing that has been involved. A lack of a fully functional exchange of information unit also makes access to appropriate information difficult as well as the proper analysis of any information received.

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 we totally agree that these are important priorities for developing countries.

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 point numbers 4, 6, 10, 12 & 13.

We do not see these priorities changing in a short time as we are still developing our transfer pricing capacity and just introduced transfer pricing documentation rules.

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?

No.

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?

What is needed is to domesticate some of these action points into law so that they become enforceable locally. As long as they are not in the domestic laws, it becomes a big challenge to implement them locally.

9. Having considered the issues outlined in the Action Plan, are there any *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?

None 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?

Yes on the following e-mails:

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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?