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BEPS implementation by developing countries: priorities, challenges, needs?

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Agenda

Aim, desk study & survey study

Main findings from the desk study

Main findings from the survey study

Overall recommendations



Aim of the report

- ▶ **Priorities, experiences, challenges and needs of developing countries when implementing BEPS recommendations**
 - ▶ specifically partner countries of German Development Cooperation (GDC)

- ▶ **Where capacity building assistance is most needed?**



Desk study

- ▶ **Identification of possible priorities of developing countries in implementing BEPS, especially the minimum standards**
- ▶ **Specific policy questions considered as relevant for GDC partner countries**
- ▶ **View of selected IOs (IMF, OECD, UN, WBG) and regional governmental organizations (ATAF, CIAT)**
 - ▶ on BEPS package implementation
 - ▶ their assessment on the countries' challenges or needs

 - ▶ information publicly available
 - ▶ telephone interviews when possible



Survey study

- ▶ **Questionnaire-based survey sent to GDC partner countries**
- ▶ **Divided into different areas:**
 - ▶ Country Strategy - priority setting regarding BEPS Actions?
 - ▶ Legislative Framework of Selected BEPS Actions: 4, 6, 7, 8-10, 13 and 15?
 - ▶ Organizational Structure - to implement the selected BEPS Actions?
 - ▶ Tax Authority's Staff Expertise - to implement the selected BEPS Actions
 - ▶ IT Infrastructure - to implement TP documentation and CbCR

Survey study

- ▶ **Survey target countries: 19 GDC partner countries**
- ▶ **Surveyed countries**
 - ▶ Burkina Faso
 - ▶ Cameroon
 - ▶ DR Congo
 - ▶ Gambia
 - ▶ Honduras
 - ▶ Liberia
 - ▶ Uganda





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Overall recommendations

- ▶ **Base erosion and profit shifting priorities for developing countries?**
 - ▶ 2014 OECD & 2015 UN reports and information other IOs
 - ▶ Selected Actions are considered as priority for developing countries
 - ▶ Action 4 (limiting base erosion involving interest deductions)
 - ▶ Action 6 (preventing treaty abuse)
 - ▶ Action 7 (preventing artificial avoidance of permanent establishment)
 - ▶ *Actions 8-10 (aligning transfer pricing outcomes with value creation)*
 - ▶ Action 11 (measuring and monitoring BEPS)
 - ▶ *Action 12 (disclosure of aggressive tax planning)*
 - ▶ *Action 13 (guidance on transfer pricing documentation – CbCR)*

Main findings from the desk study

- ▶ **Base erosion and profit shifting priorities for developing countries?**
 - ▶ 2014 OECD report and UN acknowledged:
 - ▶ ***other base erosion and profit shifting issues not covered*** under the OECD-G20 BEPS (also stated by other IOs):
 - ▶ tax incentives
 - ▶ lack of comparability data for transfer pricing
 - ▶ tax avoidance through offshore indirect transfer of assets located in developing countries
 - ▶ the taxation of fees for (technical) services by source countries
 - ▶ the taxation of rents and royalties by source countries

Main findings from the desk study

- ▶ **However some BEPS **Minimum Standards** do not match these priorities?!**
 - ▶ 2015 BEPS final reports
 - ▶ 2016 Inclusive Framework
- ▶ **Priorities for developing countries vs the Minimum Standards?**
 - ▶ ~~Action 4 (limiting base erosion involving interest deductions)~~
 - ▶ **Action 6 (preventing treaty abuse)**
 - ▶ ~~Action 7 (preventing artificial avoidance of permanent establishment)~~
 - ▶ ~~Actions 8-10 (aligning transfer pricing outcomes with value creation)~~
 - ▶ ~~Action 11 (measuring and monitoring BEPS)~~
 - ▶ **Action 13 (guidance on transfer pricing documentation – CbCR)**
 - ▶ **Action 5 (combating harmful tax competition)**
 - ▶ **Action 14 (making dispute resolution more effective)**



Main findings from the desk study

- ▶ **Inclusive Framework has shaped the priorities of developing countries**
 - ▶ Countries must implement the Minimum Standards

- ▶ **However, countries may have other priorities:**
 - ▶ What are the specific base erosion and profit shifting issues each country is confronted with?

Main findings from the desk study

▶ IOs and regional tax administration organizations on BEPS?

- ▶ their capacity building is **broader**
- ▶ integrated **specific aspects** of BEPS in their work/capacity building
- ▶ BEPS is **not first priority** – fundamental flaws

e.g. lack of proper taxpayer administration; basic knowledge on international taxation

▶ IOs (PCT) and regional tax administration organizations on more effective capacity building?

- ▶ identified measures and concrete actions for more effective capacity building
 - ▶ **progress and results**
 - ▶ aspects of these strategies and recommendations have not yet been (fully) delivered
 - ▶ coordination and coherence of tailored capacity building
 - ▶ objective system to measure the effectiveness of capacity building
- For example, BEPS related toolkits not yet delivered



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Overall recommendations

Main findings from the survey study

- ▶ Countries' tax strategic plans: **no or hardly references to BEPS**
- ▶ **Disconnection** between the commitments of the country at the **policy level** and
 - ▶ **implementation** through a country's tax strategy plan or
 - ▶ **communication** to tax administrators
- ▶ **Lack of awareness** among countries that have joined the Inclusive Framework about the **need to implement the minimum standards**
- ▶ **Essential problems** in the tax system and tax administration of some of those countries make it **difficult to consider BEPS implementation**



Main findings from the survey study

- ▶ Countries are giving **more priority** to the implementation of BEPS
Actions:
 - ▶ **Action 4** (limiting interest deductibility)
 - ▶ **Action 8-10** (aligning transfer pricing outcomes with value creation)
 - ▶ **Action 13** (guidance on transfer pricing documentation)

- ▶ Countries also expressed **other base erosion and profit shifting issues that are relevant** for them as also confirmed by the desk research

- ▶ **Most effort** seems to be devoted to **CbCR** (minimum standard)

Main findings from the survey study

- ▶ Countries are generally **aware of the relevance of BEPS** but seem **not to have yet identified which of those measures are most suitable for them** in their own situation, and the specific **content and implications** of those measures

- ▶ **Current challenges** expressed by tax administration for implementing selected BEPS Actions:
 - ▶ **lack of fulfillment of basic conditions** to implement selected BEPS Actions, for example, lack of:
 - ▶ fundamental knowledge on international tax issues
 - ▶ sufficient staff capacity and specialization
 - ▶ technological tools
 - ▶ IT infrastructure and skilled staff to operate the later



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Overall recommendations

▶ ***Should developing countries join the Inclusive Framework?***

- ▶ BEPS package: need of worldwide endorsement
- ▶ Special position of developing countries
 - ▶ measures most important for them?
 - ▶ legal and administrative situation, capacity and limitations?
for example, “participation by developing countries on equal footing”: do developing countries have the expertise and capacity to effectively provide input in the standard-setting?
- ▶ Each developing country should assess this in its own particular situation

- ▶ ***Should developing countries sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)?***
 - ▶ valuable tool to swiftly add anti-avoidance provisions to a large number of tax treaties
 - ▶ more convenient than bilateral renegotiations of tax treaties?
 - ▶ careful choices: which treaties to be covered? which provisions?
 - ▶ does not necessarily amend treaties:
 - ▶ MLI must be ratified; tax treaty must be covered; and both countries must choose the same options available

- ▶ ***Question whether or not CbCR should be made public?***
 - ▶ Issue beyond BEPS as BEPS Action 13 minimum standard: EOI subject to confidentiality and appropriate use.
 - ▶ complexities and sensitivities:
 - ▶ better social control and transparency
 - ▶ raw information needs background for general public
 - ▶ damage competitive position of MNE
 - ▶ puts strain on tax administration of developing countries
 - ▶ countries supplying information may refuse to do so if made public!!
 - ▶ first acquire some experience with the use of confidential CbCR, then reconsider the matter?

Further overall recommendations

- ▶ **Needs maybe quite different per country - proposed forms of support:**
 - (1) *Generic assistance: awareness BEPS content and relevance***
 - (2) *Tailor-made assistance***
 - (2.1) *Assistance for GDC partner countries that have joined the Inclusive Framework***
 - *Decision phase: setting priorities (minimum standards, other BEPS, and other measures)?*
 - *Planning phase: realistic plan of actions to be taken*
 - (2.2) *Assistance for GDC partner countries that have not joined the Inclusive Framework***
 - *Decision phase: setting priorities (minimum standards, other BEPS, and other measures)?*
 - *Planning phase: realistic plan of actions to be taken*
 - (2.3) *Implementation phase: capacity building and support should be linked to each country's strategic plan***



Further overall recommendations

- ▶ Needs maybe quite different per country - proposed forms of support:

(3) Country demands, and effective coordination and transparency of various international assistance programmes

(4) Effective monitoring of progress and evaluation of impact of assistance



Thank you

Questions?

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