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

Jan de Goede, Carlos Gutiérrez and Diana Calderón

IBFD, The Netherlands

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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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Main findings from the desk study

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Overall recommendations
Main findings from the desk study

- **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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Aim, desk study & survey study

Main findings from the desk study

Main findings from the survey study

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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- Aim, desk study & survey study
- Main findings from the desk study
- Main findings from the survey study
- Overall recommendations
Specific policy question – Inclusive Framework

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
Specific policy question - MLI

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
Specific policy question - pCbCR

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?

j.degoede@ibfd.org, c.gutierrezpuente@ibfd.org,
d.calderonmanrique@ibfd.com