Seventh Regional Meeting on International Taxation

Challenges and opportunities for an international tax reform implementation in Latin America and the Caribbean

Havana, Cuba Jun 6 – 7, 2018

The Seventh Regional Meeting on International Taxation was held in Havana under the auspice of the National Office of Tax Administration (ONAT) of Cuba, the Regional Platform for Economic and Social Justice (LATINDADD) and the Inter-American Center of Tax Administrations (CIAT). Representatives of 12 tax administrations from Latin America, the Ministries of Finance, UNASUR, COSEFIN, ECLAC, OECD, OXFAM, Tax Justice Network (TJN) and RJFLAC between other participants attended the meeting.

Participants discussed and shared their expertise on the global tax proposal agenda, mainly related to abuses within the international taxation framework, on implementing actions of the OECD's BEPS initiative, the concept and identification for tax havens and measures to promote tax transparency and exchange of information.

After the plenary session, the working groups with representatives of the tax administrations and ministries of finance came to some conclusions on tax policy and tax administration implementation related to main issues, such as, BEPS, tax havens and tax transparency.

The working groups main reflections, proposals and conclusions are detailed below:

I. BEPS

I.1. Positive Effects in some Latin American and Caribbean countries:

- In some countries, knowledge and capabilities to analyze international tax risks have grown.
- In some countries, decisions were made to implement policies for international operations control.
- Gradually, some Latin America and the Caribbean countries have gained ground in global debates; nevertheless, there are still significant challenges and difficulties in implementing measures to put an end to BEPS practices and they

mostly feel under represented. Special concern lies on how to include positions from countries out of the inclusive framework on BEPS.

- In most countries, specialized structures have been set up to deal with issues related to BEPS practices.
- Expectations remain high about quantitative benefits in terms of revenue collection, especially for those countries with more robust tax administrations, because of implementing BEPS and non-BEPS measures.

I.2. Main barriers in BEPS implementation:

- **Political context:**
  - In several countries of the region, political changes are frequent and have effect on the turnover of technical staff. A more robust awareness-raising strategy is needed, for both decision-makers, business community, tax intermediaries and society as a whole. The role of civil society in this regard can be key.
  - In many countries, policy formulation takes time - tax code reforms, development of treaty networks, implementation of general and specific anti-abuse rules and even constitutional reforms. Thus, it is challenging to accompany the implementation of anti-BEPS measures at the speed of implementation in the global agenda.

- **Actions 5, 13 and 14:**
  - Implementation is still challenging for those actions that require intensive use of information exchange

- **Capacity:**
  - In many countries, the technical capabilities of the Ministries of Finance and tax administrations are limited; thus, to adopt BEPS in the short or medium term or to be included in the Inclusive Framework on BEPS poses a challenge.

  - Infrastructure -technology, installed capacity, etc. - is not adequate in many tax administrations. Work on the fundamental bases or aspects of the tax administration -taxpayer registry, technical capacity of legal areas, design and processing of declarations and reporting, audit capacity, etc. - before implementing BEPS measures is needed.

- **Budget:**
  - Budget constraints linked to the work within a global agenda, and implementation of initiatives at the short/medium term limit some countries. International organizations and donors should assess the possibility of fundraising to support the participation of countries in the global agenda and to strengthen cooperation spaces, both in terms of resources and discussions on reforms.

- **Influence in the global BEPS agenda:**
    - Many countries, due to a lack of experience in international taxation arena, do not yet have a full understanding of all issues within the BEPS Action Plan. This minimizes their influence on global discussion about these topics, and they must then later on implement measures that may not fully fit their context and capacities
    - Other countries have opted for a non-BEPS reform agenda that may be as comprehensive or more comprehensive, but out of the inclusive framework. Political will and the capabilities to implement such reforms are key. The problem is that these countries are left out of the global spaces for discussion on international reforms, with no voice, representation, access to global instruments of cooperation nor capacity to influence the direction of agendas.

I.3. Recommendations and opportunities for BEPS improvement to ease its implementation or adjust it to different regional realities:

- **General points:**
    - To consolidate the implementation of the existing minimum BEPS standards.
    - To broaden and strengthen the scope of BEPS towards tax administration issues. In the same vein, it is recommended to review the BEPS toolkit to make it more understandable and useful for developing countries.
    - Evasion issues should be included in the agenda
    - The BEPS Action Plan should consider issues related to the determination of capital gains, tax benefits/incentives - in order to avoid the so-called "race to the bottom" - as well as taxation and management of self-employment based economic models and aspects related to indirect taxes.
    - To consider specific issues specific to developing countries, within the inclusive framework on BEPS, such as the concept of "Permanent Establishment" and the Digital Economy (retention at source) but ensuring that the means are provided for effective participation of non-OECD countries in these discussions, with quality, knowledge and capacity.

- **Capacitiy building**
    - Greater cooperation is needed from the international community - international organizations, donors, countries, etc. - to ease the implementation of BEPS measures in countries with fewer resources. It can be useful to organize preparation programs for countries to be joining BEPS. It is also necessary to promote more areas for exchange of experiences and good practices to detect tax risks.

- **BEPS Action**
    - **Action 5:** According to one group of countries, this action does not assess the reality of tax systems. It should go beyond intellectual property, ring fencing and/or tax rulings.
    - **Action 6:** It is recommended to modify the main purpose rule by establishing guidelines or application parameters. Likewise, it is advisable not only to challenge the preambles of Conventions to Avoid Double Taxation, reduced taxation or non-taxation through tax evasion or avoidance, , but to leave an open discussion for other topics.
    - **Action 14:** this action needs to be discussed further with developing countries, so that it fits their context.
    - Strengthen work on indirect asset transfer.

- **Others**
    - Transparency: to identify aggressive tax practices, by also identifying the users of these practices and sharing the detection system used, etc. To replicate good practices and provide information for better risk management
    - To harmonize the region's criminal tax laws on fraud and corruption, both private and public.
    - Collect and analyze criteria adopted by countries in the region when designing capital repatriation regimes with tax benefits. Also, consider how the regime has influenced collection, whether or not there has been a loss of political capital and its cost/benefit ratio.
    - Ethical pact: to restrict accounts or assets in tax havens for public officials.

II. Tax havens and transparency

II.1. Proposal for the criteria to identify a "tax haven".

- Criteria for transparency of a tax regime should be reviewed.
- Define specific parameters for low or preferential nominal tax.
- To assess criteria used by countries to accept companies without substance or no actual economic substance in operations. It is important to strengthen the definition of the principles of substance.
- Make larger international efforts to have uniform criteria or minimum standards in the definition of tax havens consistently implemented beyond the criteria of transparency or the willingness to exchange information between tax administrations.
- Define purpose of criteria or lists. Each country must be clear about the purpose of each list or criteria. For example, criteria to determine the level of cooperation or opacity of a country is different than criteria for the relocation of tax bases.
- Many countries support the idea of relying on traditional criteria that is not yet clearly reflected in international listings. The fundamental criteria are the level of effective income tax, level of transparency or opacity and economic substance in the incorporation of companies, as complementary concepts that transform a jurisdiction into a facilitator of aggressive tax planning.

II. 2. Some proposals for the effective implementation of the final beneficiary rule.

- Develop processes or mechanisms for information exchange use to validate self-reported information.
- Use of criteria based on the evaluation of the 'substance over form'.
- Establish additional criteria for the definition of final beneficiary, such as for example:
    - Veto power
    - Percentage of shares
- Criteria and procedures for handling complex cases to identify the beneficial ownership are needed.
- Thresholds - for example, of company shareholdings - may be indicative, but could help rule avoidance. Rules to assess each case and its risks are needed.