

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 **taxfdoffice@un.org**.

preference of the developed states to allocate greater taxation rights to the state of residence and restrict the ability of the source states to enforce their sovereign right of administering the taxes allocated to them, have to be accepted by the developing countries and LICs, in view of their limited ability to bargain with developed countries. In view of the inherent vulnerability of these countries in their bilateral treaty negotiations with developed countries, the United Nations needs to take a position that protects the sovereign taxation rights of the developing countries and LICs and prevent the international taxation rules from getting unjustly skewed in favour of the developed countries. In particular, the United Nations needs to take the interest of the developing countries and the base erosion and profit shifting faced by them into account while carrying out work on BEPS.

In particular, BEPS has a detrimental effect on the Indian economy because it reduces the tax revenues that could be collected in the

To ensure that the benefits of the growth of the digital footprint across the country are reaped through higher tax collections from such activities, India has consistently made demands for source-based taxation. It has also suggested withholding of taxes on payments made for digital transactions.

Further, to ensure that income sourced in India is taxed under the domestic laws, the domestic "source laws" have been strengthened both for taxation of assets located in India transferred "indirectly" and "taxation of royalty".

The General Anti-Avoidance Rules (GAAR) have been introduced in the Income-tax Act, 1961 through Finance Act, 2012 and the "Rules" have been notified on 23rd September, 2013. The current legal position is that the GAAR provisions shall apply with effect from 1st April, 2015 in respect of the tax benefit obtained from an arrangement and the said arrangement, subject to certain conditions, may be declared to be an impermissible avoidance arrangement.

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?

So far, there was no scientific method to determine whether an MNE has disclosed correct taxes in India or not at the pre-audit based approach. The tax would help in identifying the source of income. The "Rupaesi become source of income" act would help in identifying the source of income. The "Rupaesi become source of income" act would help in identifying the source of income.

tax planning, these audit techniques have either not been successful or have led to litigation.

The withholding rules requiring the “withholding agents”, which may be resident or non-residents, to withhold taxes before making payments to non-resident are quite stringent. However, in practice these also have limited effect on account of wide prevailing tax avoidance and aggressive tax planning techniques adopted by the MNEs.

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?

Lack of transparency on the part of the MNEs as stated in response to the previous question and the lack of resources, including the need of training the officers dealing with issues relating to international taxation, transfer pricing and exchange of information, are the two biggest obstacles in assessing whether an MNE has disclosed correct profits in India.

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 in

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

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?

No.

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

In many of the discussions and decisions at the OECD, India gathers the impression that the real issues are being swept under the carpet and the superficial ones are sought to be addressed. This approach is not going to significantly impact BEPS.

Besides, the approach of expecting developing countries to implement all the decisions made by the developed countries appears to be somewhat patronising and should be avoided. Steps must be taken to involve the developing countries in all decisions that are made.

Further, the developing countries should be able to benefit from the experience of Government officials of other developing countries as well as developed countries, including their experience in implementing the recommendations to address BEPS concerns and the problems faced by them. This may be done by way of technical assistance through more south-south and triangular cooperation and the United Nations must take necessary steps to facilitate the same.

Last but not the least, effective Exchange of Information amongst jurisdictions may address many BEPS concerns since the tax administrators will have additional information regarding BEPS techniques adopted by the taxpayers and it may be considered whether there is a need for convergence of these two important initiatives taken in recent times to improve the international tax structure.