

The BEPS Monitoring Group

Presentation to the Inclusive Framework of the G20/OECD BEPS Project

22 June 2017

Introduction

Thank you for the opportunity to speak at this session. I am Francis Weyzig from the Oxfam-Novib, here today representing the BEPS Monitoring Group. The BMG is an independent network of specialists on international taxation, sponsored by tax justice organisations, concerned especially with the effects of international taxation on development. We have [published reports](#) on all the Action Points in the BEPS project, and some related measures, each one prepared by a team of at least three specialists. Our reports are not approved in advance by those organisations, but they support the work of the BMG and endorse its general perspectives.

1. Developing countries and the Inclusive Framework

The BEPS Monitoring Group understands the reluctance of some developing countries towards the Inclusive Framework, if they have not been part of the actual decision making until now. The Inclusive Framework expects developing countries to commit to measures which have already been decided upon primarily by developed countries, which are mainly home countries of multinational enterprises (MNEs).

However, it also allows all countries to participate in the important continuing work of this multilateral effort to ensure that multinational enterprises can be taxed ‘where economic activities occur and value is created’. This mandate from the G20 implies strengthening of taxation at source, which is where activities actually take place.

We hope that this wider range of countries will be given sufficient opportunity to contribute their own perspective on the important work, especially on the profit-split method, attribution of profit to permanent establishments, and tax implications of digitalisation of the economy. In our view, a fresh approach is needed to these issues, moving away from the independent entity/arm’s length principle, to treat MNEs in accordance with the economic reality that they operate as unitary firms.

2. The Multilateral Convention to Implement BEPS Treaty-Related Measures

Although we argued for stronger measures during the BEPS project, the provisions in the MLI/MC-BEPS would mostly be an improvement on existing treaties. We have made a [detailed analysis](#), which shows that they generally strengthen taxation at source. Our advice is therefore that these provisions - except for art. 17 on corresponding transfer price adjustments and Part VI on Arbitration - should be adopted unless a country has a good reason not to do so, because it can deal with the problem in another way.

We would have expected OECD/G20 countries, which negotiated these provisions, to adopt them with few reservations, to enable those developing countries which wish to do so to benefit from the changes. Unfortunately, the initial lists submitted by the 68 first signatories

show that many have made numerous reservations. Only the general provisions on preventing treaty abuse in articles 6 and 7, which are a minimum commitment under the BEPS project, have not been subject to any reservation.

This is disappointing, especially in view of the support for the BEPS project voiced by the G20 leaders. It may be simply out of caution, and these reservations may still be withdrawn. Failure to do so would undermine the BEPS project, perhaps fatally. The Multilateral Convention on BEPS should establish a common floor of basic provisions. Obviously improvements are possible, and could be added over time, either by the parties acting jointly or in bilateral treaties. However, this convention should not be treated as a model from which countries can pick and choose elements to be negotiated bilaterally.

We urge OECD countries to publish clear policy statements explaining any reservations they have made, by specifying how they deal with the issue. Reservations which cannot be justified in this way should be withdrawn.

3. Country-by-Country Reporting and Transfer Pricing Documentation (Action 13)

We believe this is one of the most important and major advances in the BEPS program for reform. We emphasise that it is important for developing countries to have access to the high level information in the CbC Reports to enable them to assess all BEPS risks. Our view remains that the system for access to CbCRs through exchange agreements is cumbersome and unnecessarily cautious. There is no valid reason to consider the information in the CbCR commercially confidential, and we support the initiatives already under way in several countries for a requirement that these reports be published. Countries should in any case enact legislation to require local filing in case they do not actually obtain such reports from the MNE's home country, and this should be permitted by the OECD.

The requirements for a Master File and Local File for transfer pricing documentation are also important, as (i) countries can apply the requirements immediately for themselves, and (ii) there is no minimum threshold for the Master File. Developing countries should ensure legislation is in place which enables their tax authority to obtain this information also.

4. Ending Harmful Tax Practices and Tax Competition

There is a need for much stronger coordination and action to end the use of corporate tax havens, which undermine the effectiveness of other countries' tax systems. Until now the standards and procedures to deal with Harmful Tax Practices under Action 5 have been relatively limited. All countries signing up to the Inclusive Framework should be fully involved in the continuing work on developing these standards. The approach should be broadened, to help developing countries defend their source tax base. We believe that a narrow approach does not resolve many of the issues around harmful tax practices. There should be stricter rules on economic substance and a more binding framework, with coordinated defensive measures. In addition, the existing criteria do not cover general regimes, such as low or zero corporate tax rates.