

Implementing OECD/G20 BEPS Package in Developing Countries

An assessment of priorities, experiences, challenges
and needs of developing countries

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This report was prepared for the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) as part of its research and advisory work for the German Federal Ministry for Economic Cooperation and Development (BMZ). The aim of this report is to identify the priorities, experiences, challenges and needs of developing countries when implementing BEPS recommendations, specifically partner countries of German Development Cooperation (GDC), in order to assess where capacity building assistance is most needed. The report is divided in two main parts – a desk study and a survey study. The survey targeted GDC partner countries and it was done in July and September 2017.

Carlos Gutiérrez P.

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Abbreviations

ATAF	African Tax Administration Forum
BEPS	OECD/G20 Base Erosion and Profit Shifting
BMZ	German Federal Ministry for Economic Cooperation and Development
CbCR	Country-by-Country Reporting
CFC	Controlled foreign corporation
CIAT	Centro Interamericano de Administraciones Tributarias
DTA	Double taxation agreement
EOI	Exchange of information
FfDO	Financing for Development Office
FHTP	Forum on Harmful Tax Practices
GDC	German Development Cooperation
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IF	OECD Inclusive Framework
IFF	Illicit financial flow
IMF	International Monetary Fund
IO	International organization
IP	Intellectual property
LOB	Limitation of benefits
MAP	Mutual agreement procedure
MCMAA	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
MNE	Multinational enterprise
OECD	Organisation for Economic Co-operation and Development
pCbCR	Public Country-by-Country Reporting

PCT	Platform for Collaboration on Tax
PE	Permanent establishment
PPT	Principal Purpose Test
UN	United Nations
WBG	World Bank Group

Executive Summary

In 2013, G20 countries endorsed the OECD Action Plan to address base erosion and profit shifting concerns (BEPS).¹ BEPS refers to international tax planning strategies that use gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions, where there is little or no economic activity, resulting in tax avoidance. In 2015, the OECD presented a comprehensive package of measures (the BEPS package), which was subsequently endorsed by the G20. These measures include further guidance on the application of existing international tax standards (e.g. the arm's length principle) as well as concrete recommendations that countries may implement by introducing amendments to their domestic tax laws and tax treaties. The package also contains minimum standards, which are key priority measures where action is considered urgent: Combating harmful tax competition (Action 5); preventing tax treaty abuse, including treaty shopping (Action 6); improving transparency, which covers both Country-by-Country Reporting (CbCR) (Action 13) and the exchange of certain favourable tax rulings (Action 5); and finally enhancing the effectiveness of tax treaty dispute resolution (Action 14).

After the BEPS package was released, implementation of its recommendations became the focus of the work. In June 2016, in response to the G20 call for global and consistent implementation of the BEPS package, the OECD established the Inclusive Framework on BEPS with the involvement of G20 and non-G20 countries and jurisdictions, including developing countries, which can participate on equal footing in the BEPS work when also committing to implement the minimum standards. In December 2016, negotiations to establish a multilateral instrument to implement tax treaty related measures (MLI) were finalized and the instrument was signed in June 2017. In July 2017, an update of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration was published, incorporating the outcome of the relevant BEPS recommendations in the area of transfer pricing.

The aim of this report is to identify priorities, experiences, challenges and needs of developing countries when implementing BEPS recommendations, specifically partner countries of German Development Cooperation (GDC), in order to assess where capacity building assistance is most needed. The report is divided in two main parts – a desk study and a survey study.

The desk study aims to provide an assessment of the possible priorities, and challenges or needs of developing countries in implementing BEPS, especially the minimum standards, besides other problems of base erosion and profit shifting than those dealt with in BEPS, on the basis of studies published and interviews with IO's and regional organizations.

The survey study consisted in a questionnaire that was sent to GDC partner countries, with the main goal of assessing the current state of affairs in those countries concerning implementation of BEPS recommendations, and their specific experiences, challenges or needs. The questionnaire was divided into different areas that may be considered as customary steps that would be necessary for the development of a specific aspect of a country's tax system, including the implementation of BEPS recommendations (i.e. strategy setting, legislation and administrative implementation).² Although only a limited number of the countries requested in fact completed the survey, the results seem to provide an objective and useful impression of the situation in many GDC partner countries.

¹ In this report "BEPS" refers to the OECD/G20 Base Erosion and Profit Shifting initiative.

² For the actual survey, see Annex I. For the answers to the survey, see Annex II.

Main findings from the desk study

Main findings from the desk study are as follows:

(1) Priorities for countries that joined the Inclusive Framework

The Inclusive Framework sets, in fact, part of the priorities of some developing countries in fighting base erosion and profits shifting since, by joining the Inclusive Framework, they committed to implement the agreed minimum standards. However, these countries' priorities and, accordingly, challenges and needs for implementing these minimum standards are different and depend on their tax system and tax administration's state of development. The situation of each country should, therefore, be assessed also considering whether basic conditions underlying its legislation and administration are sufficiently met.

(2) Priorities for countries that joined the Inclusive Framework as well as countries that have not joined it

The whole BEPS package (which goes beyond the minimum standards) is clearly relevant, in protecting their tax base, for developing countries whether or not they have not joined the Inclusive Framework. However, priorities would vary depending on the specific base erosion and profit shifting issues each country is confronted with, which may also cover issues not dealt with by the BEPS package. Countries, international organizations (IOs) and regional tax administration organizations have clearly identified those other issues. For example, most recently in October 2017, the UN has identified, as issues that are of particular concern to developing countries not addressed directly by the BEPS project: the taxation of capital gains by source countries on the (indirect) transfer of assets located in their countries; the taxation of fees for (technical) services by source countries; the taxation of rents and royalties (payments for the right to use tangible or intangible property) by source countries; and the use of statutory general anti-avoidance rules in domestic law to stop taxpayers from using abusive tax avoidance arrangements and their relationship with the provisions of tax treaties.

(3) Relevant work done by IOs and regional tax administration organizations

IOs and regional tax administration organizations have integrated specific aspects of the BEPS package considered more relevant for developing countries in their work and capacity building. For example, in the 2017 update of the UN Manual on Transfer Pricing, specific sections were included on low-value adding services, cost contribution arrangements and the treatment of intangibles, in line with BEPS Actions 8–10 recommendations. The capacity building and technical assistance of these organizations is clearly much broader than the BEPS project. Implementation of the BEPS package, specifically, does not seem to be the first priority of some of these organizations when assisting developing countries while fundamental flaws still exist in their tax legislation or tax administration.

Indeed, many BEPS recommendations are considered complex and the way they can be implemented may need to be adapted to reflect the priorities and capacity of developing countries. General challenges and needs of developing countries concerning implementation of the BEPS recommendations, and other measures to counter base erosion and profit shifting issues, have been identified by IOs and regional tax administration organizations. For example, the report of the UN Subcommittee on BEPS highlighted that lack of information and capacity building were common issues for developing countries.

IOs, and later the Platform for Collaboration on Tax (PCT), have also identified measures and concrete actions for more effective capacity building. Recent OECD and PCT report(s) described progress and results that have been achieved but, nevertheless, several aspects of these strategies and recommendations have not yet been (fully) delivered. For example, commitments to improve the coordination and coherence of tailored capacity building remain especially relevant. Furthermore, it is important to also implement an objective system to measure the effectiveness of capacity building assistance to developing countries.

Besides these findings, the following important questions were addressed:

(4) Question whether or not developing countries should join the Inclusive Framework

This question entails fundamental tax policy choices. The BEPS package can be considered a major international development in combating base erosion and profits shifting which may also affect developing countries. In order to be effective, a worldwide endorsement would be important and thus participation in the Inclusive Framework recommended. However, the special position of developing countries (as regards the types of measures most important for them, but also their legal and administrative situation, capacity and limitations) need to be taken into account. Each developing country should assess the relevance of joining the Inclusive Framework in its own particular situation. In our view, offering effective assistance and support needed to achieve the situation of being able to deal effectively with the, for them, most important issues regarding base erosion and profit shifting would enable those countries to make an informed decision about joining the Inclusive Framework.

(5) Question whether or not developing countries should sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)

The MLI may be a very valuable tool to swiftly add anti-avoidance provisions to a large number of tax treaties. Whether the MLI is more convenient than bilateral renegotiations of tax treaties depends on the particular situation of each country and its treaty partners. When joining the MLI, each country must carefully decide which treaties it wants to be covered by it and which options it wants to choose, taking into account its particular tax treaty network and policy and also the position of and its relation to its treaty partners. In view of the above mentioned aspects some developing countries may require assistance to be able to make the decision to join the MLI and in making the various choices required.

(6) Question whether or not CbCR should be made public

Under CbCR, as provided by BEPS Action 13 minimum standard, large MNEs must submit specific information to the tax authorities, and those authorities will exchange this information with tax authorities of other countries where the MNE group entities operate, subject to confidentiality and appropriate use. There is an on-going discussion concerning public Country-by-Country Reporting (pCbCR), i.e. making the confidential CbCR fully public. There are many arguments in favour or against this idea. In view of the various complexities and sensitivities, we would consider it advisable for developing countries to first acquire some experience with the use of confidential CbCR, as provided by BEPS Action 13 minimum standard. At a later stage, based on the experience acquired, it could be considered in consultation with the countries providing the information to (in the future) make such information public.

(7) Question whether there are specific considerations relating to the extractive industries

Extractive industries are of great importance for many developing countries. BEPS Actions recommendations may also be relevant for the extractive industries e.g. Action 4 (limitation of interest payments), Action 6 (preventing treaty abuse), Action 7 (preventing artificial avoidance of permanent establishment), Action 8–10 (transfer pricing) and Action 13 (increasing transparency – CbCR). However, the various aspects of the fiscal regime for extractive industries (which usually comprise also other types of government take than taxation) clearly goes beyond BEPS concerns and recommendations, which broader topic could require separate attention as, for instance, recently done by the UN.

Main findings from the questionnaire–based survey study of German Development Cooperation (GDC) partner countries

Main findings from the answers of seven GDC partner countries to the questionnaire are as follows:

- Concerning the countries' tax strategic plans (where available at all), there were no or hardly references to implementing BEPS Actions recommendations.
- There seems, in some cases, to be a disconnection between the commitments of the country at the policy level and their implementation through a country's tax strategy plan or, even, communication to tax administrators.
- There also seems to be a lack of awareness among surveyed countries that have joined the Inclusive Framework about the impact of the need to implement the minimum standards, i.e. that joining the Inclusive Framework involves a commitment to at least implement the minimum standards, which entails specific domestic law and tax treaty amendments and effective implementation of those amendments by the country's tax authority.
- Base erosion and profit shifting is very relevant to the surveyed countries; however, essential problems in the tax system and tax administration of some of those countries make it difficult to consider to implement the (more sophisticated) BEPS recommendations.
- Countries expressing views on BEPS are giving more priority to the implementation of BEPS Actions 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments), 8–10 (Aligning Transfer Pricing Outcomes with Value Creation) and 13 (Guidance on Transfer Pricing Documentation), and most effort seems to be devoted to Country–by–Country Reporting (CbCR). In this context, it can be mentioned, however, that only CbCR is one of the BEPS minimum standards that must be implemented by countries that have joined the Inclusive Framework.
- Countries are generally aware of the relevance of BEPS; however, the next step should be to identify those measures that are most suitable for each country in their own situation and their specific content and implications.
- Current challenges expressed by tax administration for implementing selected BEPS Actions are the lack of fulfillment of basic conditions to do so (For example, lack of fundamental knowledge on international tax issues, sufficient staff capacity and specialization, technological tools, and IT infrastructure and skilled staff to operate the later).

Recommendations for further basic assistance to GDC partner countries

The following types of assistance seem required to enable GDC partner countries to judge the relevance of BEPS Actions recommendations and other relevant base erosion and profit shifting concerns mentioned above and, where consider relevant for them, to effectively implement these.

(1) Generic assistance

Generic training regarding the mainlines of the content of the various BEPS recommendations, and measures to counteract other base erosion and profit shifting issues not dealt with by BEPS, in order enable tax authorities, i.e. tax policymakers, tax legislators and tax administrators, to judge the relevance of those recommendations and other measures in their specific situation. In some cases, it may appear that more training may need to be given on acquiring knowledge on more basic matters. For example, general training for GDC partner countries' tax authorities on international taxation, transfer pricing or international tax planning to enable them to evaluate country's specific base erosion and profit shifting concerns.

(2) Tailor-made assistance

(2.1) Assistance for GDC partner countries that have joined the Inclusive Framework

Decision phase

These countries have in fact decided to implement the minimum standards, and what may remain is a decision about the order in which those standards will be implemented (if not simultaneously possible).

However, it should be noted that (albeit with probably less priority) also those countries may have an interest in other BEPS Actions recommendations and other measures to counteract base erosion and profit shifting issues not dealt with by BEPS (see below under Assistance for GDC partner countries that have not joined the Inclusive Framework).

Planning phase

Specific assistance to the implementation must take into account the particular situation of each country and the time frame for peer review of each minimum standard. The first step is for these countries to gain a full understanding of the legislative and administrative impact of the minimum standards and subsequently to plan their deadlines for implementation, and to draw up a concrete plan of action to meet these commitments. For example, this could be achieved in the form of more detail training on the BEPS minimum standards for tax authorities of GDC partner countries that have joined the Inclusive Framework with the aim to enable them to evaluate the necessary specific legislative amendments and administrative measures to implement those standards in their specific situation.

(2.2) Assistance for GDC partner countries that have not joined the Inclusive Framework

Decision phase

A first step should be to assist countries to identify which BEPS Action recommendations are most relevant for them taking into account the specific base erosion and profit shifting issues of each country's tax system (which may well also cover issues not dealt with by the BEPS package). For this, it is necessary to assess the tax policy, the legislative framework, and the tax administration capacity of each country.³ More detailed training for the country's tax authorities on the specific elements of the BEPS package, considered most relevant by them, is necessary to enable them to make informed decisions on those BEPS (and other possible) measures to be taken.

Planning phase

A subsequent step should be to assist countries in working out a realistic plan for implementing specific BEPS and other base erosion and profit shifting measures that have been identified and chosen, with clear objectives and concrete milestones. This plan should be part of the country's tax strategy and publicly available to inform and involve, besides the tax authorities, all other relevant stakeholders. For this, political commitment and the involvement of the tax administration are essential. A realistic plan would be the result of joint work from all tax authorities, and should certainly also consider further capacity building assistance, including training and adequate resources, needed to do such implementation.

(2.3) Implementation phase for both groups of countries mentioned above

Implementation of the BEPS measures and/or other measures included in a country's plan will require sufficient capacity building assistance and support to enable the implementation of such plan consistently and systematically.

The type of assistance to be provided, including advice to and training of participants, should be in accordance with the implementation of the plan. Training should be highly systematic, aimed at progressively building the capacity of the tax authorities. Such assistance should be based on the specific country demands and properly coordinated.

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

For the assistance and support regarding the awareness, identification and priority setting of measures, as well as, the implementation of the plan, countries can engage with development partners (e.g. IOs, other countries' governments and donors) on a demand-driven base for them to assist in realizing these.

The effective coordination and transparent work of development partners based on a country's implementation plan is necessary to achieve more effective capacity building. Furthermore, the sharing of information on country activities, as well as materials or tools between development partners, is also essential and mapping capacity building activities will help to allocate resources better.

³ Some existing tools that may serve for assessment of the tax administration capacity for this purpose, for example, the Tax Administration Diagnostic Assessment Tool (TADAT) (For more information about TADAT see Section 2.3.3.) and the IBFD Tax-Ray Assessment, which is a tool to measure the institutional, strategic and operational ability of tax administrations to effectively and efficiently implement, administer and enforce tax laws and carry out other tasks (For more information about IBFD Tax-Ray Assessment, see <https://www.ibfd.org/Consultancy-Research/Tax-Ray-Assessment>).

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

The continuous monitoring of the realization of the plan's priorities, and evaluation of the impact of all types of assistance by all stakeholders involved, are essential to achieve an efficient realization of these plans.

Recommendations concerning specific issues of relevance for GDC partner countries

(1) Whether or not GDC partner countries should join the Inclusive Framework

The Inclusive Framework is a very important forum to discuss the implementation of BEPS. Each developing country should be enabled to assess the relevance of joining the Inclusive Framework (including meeting the obligations related to it) in its own particular situation. Thus, we recommend to offer the necessary assistance and support to those developing countries, that express the need to receive such support, to identify and to in the future effectively address the, for them, most important issues regarding base erosion and profit shifting. This would enable those countries to take the decision whether joining the Inclusive Framework fits their priorities in combating base erosion and profits shifting.

(2) Whether or not GDC partner countries should sign the MLI

The MLI can be an important tool to swiftly add anti-abuse provisions to the tax treaties concluded by a country. In order to be able to decide on whether or not to join the MLI, each country must carefully consider which treaties it would like to be covered and which provisions it would want to choose, taking into account its particular tax treaty network and policy, and also the position of and its relation to its treaty partners. Thus, we recommend to offer the necessary assistance and support to developing countries requesting such support to enable them to make the decision to join the MLI and in making the various choices required.

(3) Whether or not country-by-country reporting should be public

We would consider it advisable for developing countries to first acquire some experience with the use of confidential CbCR, as provided by BEPS Action 13 minimum standard. At a later stage, and based on the experience acquired, it could be considered in consultation with the countries providing the information, to in the future make such information public.

1. Introduction

This report was prepared for the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) as part of its research and advisory work for the German Federal Ministry for Economic Cooperation and Development (BMZ).

It has been stated that developing countries have a higher reliance on corporate income tax revenues than more developed countries⁴, in which case the BEPS package would be particularly critical because these countries prioritize domestic resource mobilization to deliver the sustainable development goals. However, developing countries face policy and other challenges that affect their ability to address base erosion and profit shifting issues, specifically the lack of legislation, information and tax administrative capacity needed to implement highly complex tax rules. These deficiencies may lead to simpler but potentially more aggressive tax avoidance by multinational enterprises (MNEs) in developing countries. Therefore, political support and capacity building to address BEPS issues have been identified as key cross-cutting challenges.⁵

The aim of this report is to identify the priorities, experiences, challenges and needs of developing countries when implementing BEPS recommendations, specifically partner countries of German Development Cooperation (GDC), in order to assess where capacity building assistance is most needed. The report is divided in two main parts – a desk study and a survey study.

The desk study (section 2) aims to provide an assessment of the possible priorities of developing countries in implementing BEPS, especially the minimum standards. This section firstly describes the priorities of countries, based on whether they are part of the Inclusive Framework and the latest OECD initiatives for developing countries to implement the BEPS package. Afterwards, the section presents the view on BEPS package implementation of selected international and regional governmental organizations and their assessment on the countries' challenges or needs, where available. The section ends with the main findings from the desk study.

The second part (section 3) provides the main findings from the results of a questionnaire-based survey sent to GDC partner countries. IBFD designed a questionnaire specifically for the purpose of this study, with the main goal of assessing the current state of affairs in those

⁴ Although it is not the purpose of this report, it is worth to mention that we could not find data on corporate income tax revenue-to-GDP with respect to some of the surveyed GDC partner countries in order to confirm this statement (see table of section 3.2).

⁵ OECD, *Two-Part Report to G20 Developing Working Group on the Impact of BEPS in Low Income Countries*, Part 1 (July 2014) and Part 2 (August 2014), pages 10, 14, 37 and 43; available at <http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>.

countries and their specific experiences, challenges and needs. The main findings from the answers provided by countries also consider current commitments they may have regarding the Inclusive Framework. Countries' answers are presented in **Annex II**. Although only a few countries of those requested in fact completed the survey, the results seem to provide an objective and useful impression of the situation in many GDC partner countries.

Section 4 provides recommendations on how the GIZ and the BMZ could position themselves to further assist GDC partner countries to implement specific BEPS recommendations. It also provides recommendations concerning specific issues of relevance for GDC partner countries. Finally, it provides some comments about the survey study itself.

2. Desk study on BEPS package implementation in developing countries

2.1 Introduction

This section aims to provide an assessment of the possible priorities expressed regarding implementation of the BEPS package by developing countries and, accordingly, their needs or challenges. However, it acknowledges also that there are other base erosion and profit shifting issues, not covered by the BEPS Project, which have been recognized by different organizations as having high priority for developing countries.

Section 2.2 describes the countries' priorities in implementing the BEPS package, based on whether they have joined the Inclusive Framework. It describes in a short way what countries must do to comply with the minimum standards, the peer review and its time frame. Then it briefly looks at the latest OECD plans for developing countries to implement the BEPS package.

Section 2.3 provides an overview of the support activities on BEPS package implementation by selected international governmental organizations (i.e. IMF, UN and WBG) and regional tax administration organizations (i.e. CIAT and ATAF), including the Platform for Collaboration on Tax (PCT). It aims to provide an overview of the work of these organizations on BEPS package implementation and their view and assessment on the countries' priorities, challenges or needs. With this goal, IBFD also held, where possible, interviews with representatives of these organizations.

Section 2.4 provides the main findings from the desk research.

2.2 Assessment of possible developing countries priorities to implement the BEPS package

In 2013, G20 countries endorsed the OECD Action Plan to address base erosion and profit shifting concerns (BEPS). BEPS refers to international tax planning strategies that use gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions, where there is little or no economic activity, resulting in tax avoidance. The Action Plan identified 15 actions along three key pillars, i.e. introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards and improving transparency and certainty. In 2015, the OECD presented a comprehensive package of measures, in response to the 15 actions, which was subsequently endorsed by the G20. See **Annex III** for a brief description of all BEPS Actions.

This package includes further guidance on the application of existing international standards (e.g. the arm's length principle) as well as concrete recommendations that countries may implement to tackle BEPS by introducing amendments to their domestic tax laws and tax treaties. The package also contains minimum standards, which are key priority measures where action is considered urgent: combating harmful tax competition (Action 5); preventing tax treaty abuse, including treaty shopping (Action 6); improving transparency, which covers both Country-by-Country Reporting (CbCR) (Action 13) and the exchange of certain favourable tax rulings (Action 5); and finally enhancing the effectiveness of tax treaty dispute resolution (Action 14).

After the BEPS package was released, implementation of its recommendations became the focus of the work. In June 2016, in response to the G20 call for global and consistent implementation of the BEPS package, the OECD established the Inclusive Framework on BEPS with the involvement of G20 and non-G20 countries and jurisdictions, including developing countries, which can participate on equal footing in the BEPS work when also committing to implement the minimum standards. In December 2016, negotiations to establish a multilateral instrument to implement tax treaty related measures (MLI) were finalized and the instrument was signed in June 2017. In July 2017, an update of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration was published, incorporating the outcome of the relevant BEPS recommendations in the area of transfer pricing.

2.2.1 Country commitments to BEPS package implementation

Country commitments to implement the BEPS package can depend on whether they have joined the Inclusive Framework. The BEPS package provides recommendations to countries on how to deal with base erosion and profit shifting in a harmonized way. However, where a

country has joined the Inclusive Framework, that country has committed itself to at least implement the minimum standards.

If a country has not joined the Inclusive Framework, the whole BEPS package remains, in principle, recommendations that a country may adopt or not. However, the BEPS package priorities are clearly set, and countries may thus anyway encounter increased political pressure to adopt the minimum standards.

2.2.2 OECD Inclusive Framework and minimum standards⁶

In June 2016, the OECD established the Inclusive Framework on BEPS. This framework will (1) allow interested countries and jurisdictions to work on equal footing with OECD/G20 member countries, on developing standards on BEPS-related issues; (2) review and monitor the implementation and impact of the whole BEPS package and, specifically, the BEPS minimum standards; (3) gather data for monitoring other aspects of implementation (e.g. BEPS Actions 1 (digital economy) and 11 (measuring and monitoring BEPS)); (4) finalize the remaining technical work to address BEPS challenges (e.g. transfer pricing profit split method); and (5) monitor outstanding and emerging base erosion and profit shifting issues. To join the Inclusive Framework a country or jurisdiction must pay an annual membership fee of EUR 20,000.– reduced when applied to developing countries.⁷ See **Annex IV** for the latest list of Members of the Inclusive Framework on BEPS.

The monitoring process, specifically a peer review process on the implementation of the minimum standards, will ensure that all members, as well as jurisdictions of relevance, will consistently implement the BEPS package. All countries and jurisdictions joining the framework will participate in this review process. Jurisdictions of relevance are those, which are not members of the Inclusive Framework, but whose implementation of a particular minimum standard is important to safeguard the desirable level playing field.

The Inclusive Framework would also provide support to tax administrations through the implementation process with a special focus on addressing the specific BEPS challenges faced by lower-capacity countries, working with regional tax organizations and partners in the PCT.

⁶ OECD, *Inclusive Framework on BEPS, Progress Report July 2016 – June 2017*; available at <http://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf>. OECD, *Background Brief - Inclusive Framework on BEPS*, January 2017; available at <http://www.oecd.org/tax/beps/background-brief-inclusive-framework-for-beps-implementation.pdf>. OECD, *Report to G20, supra n. 6*; OECD, *Inclusive Framework on BEPS, A Global Answer to a Global Issue*, September 2017, Flyer; available at <https://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf>.

⁷ OECD, *Background Brief - Inclusive Framework, supra n. 8*, at 11. We could not find more information on the reduction for developing countries.

Minimum standard on preferential regimes (Action 5)

One of the key pillars of the BEPS package is realigning taxation with the location of the underlying economic activity and this is reflected in the minimum standard on harmful tax practices relating to preferential regimes. Under this minimum standard, countries must secure that preferential tax regimes meet a substance requirement, i.e. the substantial activity criterion. Intellectual property (IP) regimes, such as patent boxes, need to be compliant with the “nexus approach”, which limits the tax benefits in proportion to the underlying research and development (R&D) activities effectively undertaken in the country providing the beneficial regime. The BEPS Action 5 Report contained more general guidance for the application of the substantial activities criterion to non-IP regimes.

With this goal, countries must identify, review and, if necessary, amend or terminate preferential tax regimes that have harmful features in line with the agreed format and protocols. In some cases, they must enact legislative and regulatory amendments to meet this commitment. Under the review process, each jurisdiction completes a standardized self-review questionnaire about a relevant regime and submits the relevant legislation to the Forum on Harmful Tax Practices (FHTP).

Minimum standard on EOI on tax rulings (Action 5)

Since in the past tax administrations have had limited information on the global picture relevant to the correct taxation of the profits of multinational enterprises, two BEPS minimum standards focus on enhancing transparency with the implementation of the exchange of information on tax rulings (Action 5) and on Country-by-Country reports (Action 13), to ensure that there will be fewer places for BEPS arrangements to remain hidden. Specifically, under the minimum standard on exchange of information on tax rulings, countries must spontaneously exchange information on rulings with all other jurisdictions for which those rulings may be relevant. All rulings in key risk categories, established under Action 5, fall within the scope of this exchange.

To this aim, countries must put in place the necessary legal framework for spontaneous exchange of information. Countries must identify, prepare and start exchanging information on rulings in line with the agreed format and protocols. In some cases, they must enact legislative and regulatory amendments to allow them to meet this commitment. The standard requires the exchange of past rulings, by 31 December 2016 for BEPS Associates, or by 31 December 2017 for members that joined the Inclusive Framework on BEPS during 2016, or by 31 December 2018 for non-G20 non-financial centre developing countries. The additional time for developing countries would apply where necessary on account of

capacity constraints and where the FHTP has been informed.⁸

Minimum standard on preventing tax treaty abuse (Action 6)

Recognising that tax treaty abuse, and in particular treaty shopping, raises some of the most important sources of BEPS concerns, the minimum standard on preventing treaty abuse ensures a minimum level of protection against treaty shopping. Specifically, under this minimum standard, countries must include specific anti-abuse provisions in their tax treaties to counter treaty abuse, especially treaty shopping, along with an explicit statement in the preamble of each treaty that the treaty is not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Countries will meet this standard by adopting in their tax treaties one of three alternatives as follows: (1) adopt the principal purpose test (PPT) rule; (2) adopt the PPT rule and the simplified limitation on benefits (SLOB) rule; or (3) adopt a detailed limitation on benefits (LOB) rule supplemented by a specific rule to deal with so-called conduit financial arrangements.

Countries may choose to adopt these anti-abuse provisions either through joining the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) or by bilaterally renegotiating their existing tax treaties. Depending on the countries' constitutional system for implementing treaties, this may also require the implementation of domestic legislation.

Minimum standard on Country-by-Country Reporting (Action 13)

As previously mentioned, the exchange of information on Country-by-Country reports (Action 13) is a minimum standard that focused on enhancing transparency. Country-by-Country Reports (CbCRs) contain information on where an MNE records profits and sales, employs staff, holds assets and pays and accrues taxes. CbCRs are a powerful tool to allow tax authorities to see the big picture of an MNE's operations and conduct more effective high-level transfer pricing risk assessments.

To implement this minimum standard, countries must establish the necessary domestic legal framework for CbCR, i.e. implement an obligation for relevant MNEs to file CbCR standard templates, and to ensure that CbCR information can be exchanged between tax administrations, on a basis of confidentiality and appropriate use of the information

⁸ In this context, developing countries refer to non-OECD countries, accession countries, and non-G20 countries that are listed on the OECD Development Assistance Committee List of Official Development Assistance Recipients, and do not house relevant financial centres. See <http://www.oecd.org/dac/stats/daclist.htm>. OECD, BEPS Action 5 on Harmful Tax Practices: Transparency Framework, Peer Review Documents, February 2017, page 13. Available at <https://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>

received, pursuant to an international instrument (e.g. a double tax convention, tax information exchange agreement or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters – MCMAA).

To this end, countries may need to introduce domestic legislative changes and sign the Multilateral Competent Authority Agreement, which is designed to operationalize the exchange of CbCR reports between jurisdictions that are parties to the MCMAA. Alternatively, jurisdictions may also sign bilateral Competent Authority Agreements to operationalize the exchange of CbCR information.

Minimum standard on effective dispute resolution (Action 14)

Finally, the need to avoid double taxation is also an important component of the BEPS package. Thus, a minimum standard on dispute resolution was established according to which countries must take several measures to improve the effectiveness of international dispute resolution mechanisms, including dispute prevention, availability and access to mutual agreement procedures (MAPs), resolution of MAP cases and implementation of MAP agreements.

Countries may choose to meet the tax treaty–related requirements by signing the MLI or bilaterally renegotiating their existing tax treaties (*see* section 2.2.4.1). In addition, legislative and tax administration measures may be necessary to meet these requirements.

For the implementation of minimum standards by GDC partner countries, *see* section 2.2.2.2.

Should developing countries join the Inclusive Framework?

Whether or not to join the Inclusive Framework entails fundamental tax policy choices for developing countries. The BEPS package can be considered a major international development in combating base erosion and profits shifting. In order to be effective, a worldwide endorsement would be important and thus participation in the Inclusive Framework recommended. However, the special position of developing countries (as regards the types of measures most important for them, but also their legal and administrative situation, capacity and limitations) need to be taken into account carefully.

On the one hand, a country may join the Inclusive Framework to participate on equal footing in determining (future) BEPS–related issues. The country may also benefit from technical assistance from the partners in the Inclusive Framework (*see* section 2.5.). In addition, the country’s participation in the Inclusive Framework work would also increase the level of

knowledge and awareness of that country's tax authorities to effectively combat base erosion and profit shifting.

On the other hand, joining the Inclusive Framework implies the commitment (1) to pay limited annual fees, (2) to accept and implement tax policy established by the Inclusive Framework in the future, and (3) to implement the minimum standards. The latest may not always be the first priority of developing countries. Indeed, generally, there seems to be consensus that BEPS Action 4 (limiting deductibility of interest payments), Action 6 (preventing treaty abuse), Action 7 (preventing artificial avoidance of permanent establishment status), Action 8–10 (aligning transfer pricing outcomes with value creation), 11 (measuring and monitoring BEPS) and 13 (transfer pricing documentation) are considered as priority areas for developing countries (*see* Section 2.2.3 for further information on this matter and a brief description of these BEPS Actions). However, Action 5 (combating harmful tax competition) and Action 14 (improving effective dispute resolution) minimum standards seem not to be considered as priority areas for developing countries, although those Actions seem necessary to guarantee a level playing field (avoid harmful tax competition leading to base erosion and profit shifting) and adequate solutions of double taxation.

Moreover, developing countries would need to have an adequate level of knowledge and experience to properly provide input in (future) BEPS-related issues, which may require substantial capacity building in some cases. Furthermore, participating in the Inclusive Framework work (e.g. meetings) would require the developing country's tax authorities to assign officials with time for preparation, attendance and follow up work, which may imply stretching already limited personnel resources.

Each developing country should assess the relevance of joining the Inclusive Framework in its own particular situation. In our view, offering effective assistance and support needed to achieve the situation of being able to deal effectively with the, for them, most important issues regarding base erosion and profit shifting would enable those countries to make an informed decision about joining the Inclusive Framework.

2.2.2.1 Peer reviews of the BEPS minimum standards and time frame^{9,10}

Each Inclusive Framework member will undergo a peer review process, based on specific terms of reference and methodology for each standard. The terms of reference set out the criteria for assessing the implementation of the minimum standard, while the methodologies set out the procedural mechanism by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow-up process. Mechanisms differ depending on the BEPS Actions and take into account countries' specific circumstances.

The peer reviews take place from 2016 through to 2020. The timing for each peer review reflects the implementation deadlines for each particular standard. A peer review deferral mechanism, in specific cases, would take into account the lower capacity and limited resources of some jurisdictions:

- for the exchange of rulings (Action 5), the peer review time frame distinguishes between OECD/G20 member countries, non-developing countries and developing countries that request additional time. In case of the last group the first peer review will be in 2019 for the 2018 implementation period onwards;
- for preferential regimes (Action 5), the peer review for all Inclusive Framework members takes place in 2017 and 2018;
- for treaty shopping (Action 6), the peer review for all Inclusive Framework members takes place in 2017 and 2018;
- for CbCR (Action 13), the peer review for all Inclusive Framework members takes place in the period 2017 to 2019; and
- for dispute resolution (Action 14), the peer review for groups of Inclusive Framework members takes place in a specific month and year between 2016 and 2019. However, not all members are currently scheduled yet for their review based on the Terms of Reference, particularly GDC partner countries.

For further information on the schedules for the peer reviews of each minimum standard, see **Annex V**.

⁹ For the terms of reference and methodologies of the peer review of each minimum standard, see www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf; www.oecd.org/ctp/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf; www.oecd.org/tax/treaties/beps-action-6-preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstance-peer-review-documents.pdf. On making dispute resolution mechanisms more effective, see www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf

¹⁰ For the details of the schedule of the peer reviews of each minimum standard, see also OECD, *Inclusive Framework on BEPS, Progress Report*, *supra* n. 8.

2.2.2.2 Minimum standards and GDC partner countries

Minimum standards must be implemented. However, what this commitment entails for developing countries and when this commitment must be met, would vary depending on the minimum standard and the particular country.

Concerning preferential tax regimes (Action 5), the OECD released a report¹¹ in October 2017 concerning the review in 2016 and 2017 of 164 preferential regimes that have been brought to the attention of the FHTP. This was done primarily through each jurisdiction self-identifying its preferential tax regimes and notifying the FHTP, supplemented by the ability of a peer jurisdiction to alert the FHTP to a regime. Concerning the 19 GDC partner countries that were targeted by the survey study (*see* section 3.2), the FHTP has reviewed preferential tax regimes only in the cases of Kenya (special economic zone and export processing zone regimes – status: under review) and Liberia (shipping regime – status: not harmful). In 2018, the FHTP will continue its work, *inter alia*, commencing the monitoring of substantial activities in non-IP regimes.

Concerning the exchange of tax rulings (Action 5), developing countries may request that their first peer review be postponed to 2019. Nevertheless, to benefit from receiving information on rulings, developing countries must also guarantee its confidentiality and appropriate use, pursuant to an international instrument, and accordingly they may need to amend relevant domestic legislation where necessary. In addition, these countries should also put in place the necessary processes to draw on the information on rulings in their assessment processes in order to actually benefit from the received information.

Concerning the CbCR (Action 13), most of the GDC partner countries would be on the receiving end of the exchange of information (they would normally not have MNEs with annual consolidated group revenue equal to or more than EUR 750 million, whose parent is resident in those countries). Nevertheless, to benefit from receiving CbCR information, they must guarantee its confidentiality and appropriate use, pursuant to an international instrument. In addition, these countries should also put in place the necessary processes to draw on the information in the CbCR in their transfer pricing risk assessment processes in order to actually benefit from the received information. The OECD has acknowledged, as challenges for some developing countries, capacity constraints to put in place the necessary legal framework as well as protections in relation to confidentiality and the appropriate use

¹¹ OECD, *Harmful Tax Practices – 2017 Progress Report on Preferential Regimes*; available at: <http://www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm>

of the information. The Inclusive Framework would be exploring practical ways to address these constraints to help these countries to securely receive CbCR information.

Concerning preventing tax treaty abuse (Action 6) and effective dispute resolution (Action 14), as various GDC partner countries do not have tax treaties or have only a handful of (old) tax treaties, they might decide to bilaterally renegotiate those tax treaties, instead of signing the MLI, or consider those provisions in a future treaty policy (see Section 2.2.4.1). However, they will at some stage still need to meet these standards in their tax treaties. In addition, in the case of dispute resolution, under the peer review terms of reference, the MAP Forum should defer the review of any member that is a developing country and is not an OECD or G20 member country, if that member has not yet encountered meaningful levels of MAP requests and there is no feedback from other members of the MAP Forum, indicating that the jurisdiction's MAP regime requires improvement. This seems to be the case for most of the GDC partner countries as only South Africa is scheduled for review in August 2018.

2.2.3 Non–minimum standard BEPS recommendations and other base erosion and profit shifting issues of priority for developing countries

Early in 2014, following the G20's request, the OECD prepared a report¹² on the main sources of base erosion and profit shifting in developing countries and how these relate to the BEPS Action Plan. In the report, which aimed to provide the views of developing countries with respect to BEPS, the OECD acknowledged the impact of BEPS on domestic resource mobilization, resulting in forgone tax revenue and higher costs of tax collection. However, the report also recognized additional areas of concern regarding base erosion and profit shifting not covered under the BEPS package, i.e. tax incentives, lack of comparability data for transfer pricing and tax avoidance through offshore indirect transfer of assets located in developing countries. Actions 4, 6, 7, 8–10, 11 and 13 were considered as priority areas for developing countries:¹³

- Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments) recommendations provide best practices that countries may choose to adopt in their domestic legislation;
- Actions 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) and 7 (Preventing the Artificial Avoidance of the Permanent Establishment Status) provide, in addition to minimum standards, specific rules that countries may choose

¹² OECD, *Two-Part Report to G20*, *supra n. 6*.

¹³ OECD, *Two-Part Report to G20*, *supra n. 6*, at 37.

to adopt in their tax treaties. Such anti-avoidance provisions are incorporated in the MLI and they will soon be part of the updated OECD and UN Model Conventions;

- Actions 8–10 (Aligning Transfer Pricing Outcomes with Value Creation) recommendations provide transfer pricing guidance aimed at ensuring that tax results in controlled transactions are aligned with value creation in substance;
- Action 13 (Guidance on Transfer Pricing Documentation) provides, in addition to the CbCR minimum standard, a standardized approach regarding transfer pricing documentation (i.e. Master File and Local File) that countries may choose to adopt in their domestic legislation. Transfer pricing recommendations were incorporated into the OECD Transfer Pricing Guidelines; and
- Action 11 provides recommendations concerning the need for measuring and monitoring BEPS.

Specific BEPS issues with a high priority for developing countries include base eroding payments, service charges, management and technical fees, specific transfer pricing issues (such as supply chain restructuring that contractually reallocates risks and profits to more favourable tax jurisdictions) and treaty abuse.¹⁴

Furthermore, the OECD acknowledged that, to tackle base erosion and profit shifting issues, developing countries faced capacity building as one of their biggest challenges, thus “*BEPS solutions for developing countries may need to be tailored to this reality, and concrete technical support will be needed to enable developing countries increase their capacity to improve their domestic resource mobilization*”.¹⁵

2.2.4 Specific issues relating to the BEPS package

2.2.4.1 Whether developing countries should sign the MLI or bilaterally renegotiate tax treaties

Tax treaties are based on a set of common principles designed, among other aims, to eliminate double taxation that may occur in the case of cross-border trade and investments. There are thousands of tax treaties in force, which generally follow the OECD model convention and/or the UN model convention. Several BEPS Actions points (including Action 2 on hybrid mismatches, Action 6 on various types of treaty abuse, Action 7 on avoiding having a permanent establishment and Action 14 on international dispute settlements) contain recommendations to amend tax treaties to combat improper use of tax treaties and

¹⁴ OECD, *Two-Part Report to G20*, supra n. 6, at 24-27.

¹⁵ OECD, *Two-Part Report to G20*, supra n. 6, at 37.

deal with the possible disputes between states which may result from these measures. However, the high number of tax treaties makes updating the current tax treaty network highly burdensome and time consuming as, in principle, it would be necessary to bilaterally renegotiate each tax treaty. The report on Action 15 of the BEPS Action Plan (Developing a Multilateral Instrument to Modify Bilateral Tax Treaties) concluded that a multilateral instrument to modify bilateral tax treaties to implement the tax treaty-related BEPS measures was not only feasible, but also desirable to streamline the harmonious adoption of anti-avoidance measures.¹⁶

Countries may sign up to the MLI or choose to bilaterally renegotiate their tax treaties to incorporate BEPS minimum standards and other treaty anti-avoidance provisions. Whether the MLI is more convenient than bilateral negotiations depends on the particular situation of each country and its treaty partners. For example, a country with a large network of tax treaties may find the MLI a convenient tool to swiftly amend its tax treaties to incorporate only specific anti-avoidance provisions without initiating many full fledged tax treaty renegotiations. Instead, a country with a limited network of old tax treaties may find more convenient to bilaterally renegotiate those treaties in order to also address other issues of concern (e.g. the balance of taxation rights allocated to each country in respect of particular types of income, or relevant changes in the domestic laws of the countries).

Furthermore, the MLI contains a number of provisions on which there was no full agreement between countries. As a result, the MLI contains several optional provisions. This means that a country contemplating to sign the MLI must make decisions regarding these various options. Thus, although a valuable tool to swiftly incorporate certain anti-avoidance rules, it requires decisions based on countries' tax treaty policy. As some developing countries may not have a clear tax treaty policy, it requires in those situations explanation and consideration which respect to which treaties it wishes to be covered by the MLI and which substantive MLI provisions it wishes to be applicable.

Signing the MLI does, by the way, not necessarily mean that a particular tax treaty of that country will indeed be amended by the MLI. For this, it will be necessary that (1) both treaty partners ratify the MLI, (2) list their bilateral tax treaty as an agreement that they wish to be covered by MLI, and (3) choose the same substantive MLI provisions. Thus, in some situations when MLI signatories make different choices, it may still be necessary to renegotiate certain bilateral tax treaties.

¹⁶ OECD, *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 2015 Final Report*; available at: <http://www.oecd.org/tax/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report-9789264241688-en.htm>

Finally, specific interpretation issues may arise regarding the application of the MLI, which may be more complicated in cases where treaties have been signed in languages other than the official languages of the MLI (English and French).¹⁷

Therefore, the MLI may indeed be a valuable tool to swiftly add anti-avoidance provisions to a large number of tax treaties, but each country must carefully decide which treaties it wants to be covered and which provisions it wants to choose, taking into account its particular tax treaty network and policy and also the position of and its relation to its treaty partners. In view of the above mentioned aspects some developing countries may require assistance to be able to make the decision to join the MLI and in making the various choices required.

2.2.4.2 Whether Country by Country Reporting should be public

Under CbCR, as provided by BEPS Action 13 minimum standard, large MNEs must submit specific information to the tax authorities, and those authorities will exchange this information with tax authorities of other countries where the MNE group entities operate, subject to confidentiality and appropriate use (*see* Section 2.2.2 for further description of this minimum standard). The purpose of CbCR is to provide this information to tax administrations, which is important for making transfer pricing risks assessments and, accordingly, to better target taxpayers for auditing.

Beyond the BEPS project, there is an on-going discussion concerning public Country-by-Country Reporting (pCbCR), i.e. making the confidential CbCR fully public.

Some NGOs have actively supported pCbCR arguing that increased transparency would better support the BEPS initiative due to an increased scrutiny by the media and civil society.

Those against pCbCR argue that the information is rather technical and making it public without any background or explanation may negatively influence the position of MNEs in a particular country. For example, the overall MNE's information compared to the MNE's specific country information may, as regards the latter, show relatively higher sales, but lower profits in that country, resulting in negative publicity in that country; however, this could well be caused by a large investment in a new plant in that country, which can be subject to a general regime of accelerated depreciation leading to relatively low profits in the initial years. In addition, the information could influence the competitive position of the MNE in relation to its competitors.

¹⁷ There are available various unofficial translations of the MLI.

Defenders of pCbCR counter-argue that it should be possible to amend the legislation as necessary (e.g. excluding highly sensitive information from CbCR), and that some companies must make their financial statements publicly available already and those companies do not experience such problems (e.g. banks, insurance companies and other companies operating in regulated industries).

In this context, it should also be noted that some countries are strongly opposed to making the CbCR publicly available, and may not provide the information at all to countries that, going beyond Action 13 minimum standard, make the information unilaterally public.

From a developing country perspective, it would seem to us that on the one hand, pCbCR would no longer make it necessary to take measures to secure the confidentiality of that specific information and to secure its limited use, whereas public pCbCR may also promote multinationals to abide stricter to the letter and spirit of the tax law and to avoid aggressive tax planning constructions. However, on the other hand, measures may need to be taken by the tax authorities in cases of unjustified public discussion that may damage the position of an MNE in a country and, consequently, might limit (further) investment in that country. Finally, one should also realize that the tax administration of a developing country may in some cases be put under increased pressure to rapidly take appropriate action in case where MNEs' pCbCR information becomes public, which in the public perception may seem to point at an unsatisfactory level of tax duties in that country by that specific taxpayer. This may stretch a tax administration's (limited) capacity to be able to timely and accurately respond, and it may raise broader issues concerning confidentiality of taxpayer information if the public expects responses from the competent tax authorities regarding specific taxpayers.

In view of the above mention complications, we would consider advisable to first acquire some experience with the confidential and limited use of CbCR, as provided by BEPS Action 13 minimum standard. At a later stage, based on the experience acquired, it could be considered in consultation with the countries providing the information to (in the future) make such information public.

2.2.4.3 Taxation of the extractive industries¹⁸

The extractive industry plays a substantial role in the economy of many developing countries. For example, in more than twenty countries, petroleum revenues comprise at

¹⁸ UN, Subcommittee on Extractive Industries Taxation Issues for Developing Countries, 2014, Note by the Secretariat (E/C.18/2014/2), available at http://www.un.org/ga/search/view_doc.asp?symbol=E/C.18/2014/2&Lang=E

UN, Subcommittee on Extractive Industries Taxation Issues for Developing Countries, 2016 Presentation on Extractive Industries Taxation, available at <http://www.un.org/esa/ffd/events/event/ie-2016-ictm.html>

The UN Committee of Experts is expected to publish a handbook on selected issues in taxation of the extractive industries by the 2017.

least 10% of national GDP; and in some cases, this fraction raises to 80%. The government's share of the proceeds depends on the fiscal regime applicable to this sector, which must find a balance between attracting investment to explore and exploit natural resources and ensuring that the government receives a fair share of the country's resource wealth.

Developing countries faced different issues when designing and administering an extractive industries fiscal regime, whose scope is much broader than BEPS concerns e.g. capital gains taxation (including for instance offshore indirect sales of mining rights); decommissioning (for instance, the proper dismantling the mining installation and restoration of inevitable changes to the direct surrounding of the places of extraction); tax treaty issues; and value added taxation.

Due to the relevance and complexity of the matter, in 2013, the UN Committee of Experts created a Subcommittee on Extractive Industries Taxation Issues for Developing Countries. The UN Committee is expected to publish a handbook on selected issues in the taxation of the extractive industries in 2017. The Subcommittee has been working on the following specific issues considering the whole life cycle of a project (exploration, development, production, decommissioning and rehabilitation):

- tax aspects of negotiation and renegotiation of concession contracts and the need to include tax officials during these negotiations;
- government fiscal take, i.e. various instruments (including also taxation) that are used by the states to acquire revenues from the extractive industries;
- tax treaty aspects (international allocation of taxing rights in case of cross-border investors and subcontractors);
- specific permanent establishment issues, including implications with respect to non-resident contractors and subcontractors;
- the tax treatment of decommissioning cost for mining, oil and gas projects; and

value added tax issues related to the extractive industries. Therefore, the fiscal regime for extractive industries is a matter of high relevance for developing countries that clearly goes beyond BEPS concerns and recommendations, which broader topic would require separate attention. Nevertheless, some BEPS Actions recommendations may also be relevant to this industry, e.g. Action 4 (limitation of interest payments), Action 6 (preventing treaty abuse), Action 7 (preventing artificial avoidance of permanent establishment), Action 8-10 (transfer pricing) and Action 13 (increasing transparency - CbCR).

2.2.5 OECD plans for developing countries to implement the BEPS package¹⁹

*2014 strategy*²⁰

In 2014, the strategy to involve developing countries in the BEPS initiative included:

- the possibility of direct participation of developing countries in BEPS decision-making bodies (that would now be achieved via the Inclusive Framework);
- regional meetings and networks of tax policy and administration officials in five specific regions (e.g. ATAF and CIAT);
- capacity building support through mentoring and the development of toolkits in collaboration with IOs (e.g. via the PCT; see Section 2.3.1); and
- tailor-made initiatives, including capacity building programmes and audit programmes launched in the framework of the Tax Inspectors Without Borders (TIWB).

2017 strategy

In 2017, the OECD has developed a Plan Proposal for the period 2017–2020 for the implementation of BEPS Actions by developing countries to enable them to improve their capacity to tax MNEs fairly and effectively.

The new plan aims to achieve:

- effective participation of developing countries in the BEPS standard setting and policy solutions;
- effective implementation by developing countries of the minimum standards and other priority actions for developing countries; and
- enhanced legislative, organizational and human resource capabilities in developing countries.

To achieve such objectives, the OECD would carry on the following actions based on countries' demand:

¹⁹ OECD, *The BEPS Project and Developing Countries: from Consultation to Participation* (November 2014); available at <http://www.oecd.org/ctp/strategy-deepening-developing-country-engagement.pdf>; OECD, *BEPS and Developing Countries: an OECD Proposal 2017/202*, 2017; OECD, *Inclusive Framework on BEPS, Progress Report*, *supra n.8*; OECD, *Two-Part Report to G20*, *supra n. 6*.

²⁰ OECD, *Two-Part Report to G20*, *supra n. 6*, at 49-55.

- assisting countries in building a supportive environment by generating political will and commitment;
- building a regional architecture to the Inclusive Framework;
- mentoring, twinning, training-of-trainers, and developing e-learning and webinars;
- issuing toolkits, guidance and other types of diagnostic work;
- country-level capacity building on transfer pricing and other BEPS issues; and
- country-level audit support through the TIWB programme.

The 2017 Inclusive Framework Progress Report also states that multilateral and bilateral assistance is intended to be available within the Inclusive Framework. Examples of this type of assistance include the OECD Global Relations seminars and workshops, and bilateral support on transfer pricing and other BEPS-related issues (i.e. tailored country level assistance through programmes that are undertaken in partnership with other organizations such as ATAF, the European Commission and the World Bank Group).²¹

These plans seem to be a good starting point for implementing the BEPS package, but obviously one has to still see how substantive and timely the actual support will be, and also whether in that process sufficient account will be taken of the special positions, situations and priorities in developing countries.

2.3 Overview of international organizations' work on BEPS package implementation in developing countries

This section aims at reviewing the work already done by other selected international governmental organizations (i.e. the UN, WBG and IMF) and regional organizations (i.e. ATAF and CIAT), including the PCT, concerning BEPS package implementation in developing countries, and identifying their views concerning countries' experiences, challenges and needs. In addition to information publicly available, it is based on interviews held, where possible, with officials of these organizations.²² This section also aims to provide information about specific countries benefiting from capacity building assistance; however, in some cases, this is not possible due to the confidentiality rules of some IOs.

²¹ OECD, *Inclusive Framework on BEP, Progress Report, supra n. 8* at 28-29.

²² Due to time constraints, at the time of delivery of this report, we could not yet check the relevant information of this section regarding UN with this IO, in order to give it the opportunity to make remarks. However, we will take any remarks into account to amend this report as necessary.

2.3.1 Platform for Collaboration on Tax (PCT)²³

In 2016, international governmental organizations launched the PCT to intensify their cooperation on tax issues with the main aim to better support governments in addressing tax challenges, i.e. to better frame technical advice to developing countries as they seek more capacity support and participation in designing international rules. The PCT aims to operate transparently and to make its work plan and outputs available to the general public, government stakeholders and donors. To this aim, the PCT would provide a framework for:

- producing concrete joint outputs on domestic and international tax matters;
- strengthening dynamic interactions between standard setting, capacity building and technical assistance (i.e. experience and knowledge from capacity building work feed into the standard setting and vice versa); and
- sharing information on activities more systematically, including country-level activities.

The PCT's ambitious objectives would be translated into more concrete action points, including:

- supporting developing countries to participate in the implementation of BEPS and to input into the future global standard setting. Concerning the Inclusive Framework, this support would include: (1) advising on a mode of BEPS package implementation that is fit for countries that may want to join the Inclusive Framework; and (2) supporting countries to participate actively in it;
- assisting in capacity development. PCT would (1) develop common and jointly owned training materials and train-the-trainer programmes to maximize impact at minimum cost, and (2) report on the impact of effective IO assistance in tax reforms in developing countries;
- improving awareness to build effective EOI mechanisms, i.e. awareness of the impact of the agreed international standards (i.e. benefits/cost for countries engaging in EOI);
- producing joint policy papers, analysis and guidance on “taxation and ‘informal’ economy”; and

²³ In the PCT, the following international governmental organizations are participating: IMF, OECD, UN and WBG. See also PCT [website](http://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm) information at <http://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm>. The Platform for Collaboration on Tax, *Concept Note* (2016); available at <https://www.oecd.org/ctp/concept-note-platform-for-collaboration-on-tax.pdf>; and PCT Report, *Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries* (2016); available at <http://www.oecd.org/ctp/enhancing-the-effectiveness-of-external-support-in-building-tax-capacity-in-developing-countries.pdf>. In this report, when mentioning IOs, we mean these organizations.

- information sharing and coordination among the IOs on a set of high-priority tax issues.²⁴

To date, most of the work of the PCT has dealt with the preparation of eight toolkits on specific topics:²⁵

- “Options for Low Income Countries’ Effective and Efficient Use of Tax Incentives for Investment” (published on 15 October 2015);
- “Addressing Difficulties in Accessing Comparable Data for Transfer Pricing Analyses” (published on 22 June 2017);
- “Taxation of Offshore Indirect Transfers” (draft report published on 15 September 2017);
- Transfer pricing documentation requirements (not published yet);
- Tax treaty negotiation (not published yet);
- Base eroding payments (not published yet);
- Supply chain restructuring (not published yet); and
- Assessment of BEPS risks (not published yet).

Some toolkits aim to translate key BEPS outcomes into user-friendly guidance that would help low-capacity countries to implement them (e.g. Actions 4 and 13). Others address base erosion issues not included in the BEPS Project (e.g. taxation of offshore indirect transfers, tax treaty negotiation and tax incentives; *see* section 2.2.3), some of which (i.e. tax incentives) have been the focus and outcome of major work of IOs in previous years.

As expressed above, only three toolkits have been published to date, but it is expected that the other toolkits will be published in 2017 and 2018. Due to the recentness of the issuance of such toolkits, up to this date, we could not obtain information regarding any plan for the practical application and evaluation of the usefulness of such toolkits. Indeed, the aim and content of such toolkits would seem useful for developing countries, provided that they can be used in a practical manner. In this context, it is also worth to note the work of the UN Financing for Development Office (FfDO), which initiated in 2016 a capacity development programme that, *inter alia*, focuses on disseminating the demand driven practical information contained in its recently published handbooks (*see Section 2.3.2*).

²⁴ The first Global Conference of the PCT – Taxation and the Sustainable Development Goals – will be held in February 2018.

²⁵ (1) PCT, *Options for Low Income Countries’ Effective and Efficient Use of Tax Incentives for Investment* (published on 15 October 2015), available at <https://www.imf.org/external/np/g20/pdf/101515.pdf>; (2) PCT, *Addressing Difficulties in Accessing Comparable Data for Transfer Pricing Analyses* (published on 22 June 2017), available at <https://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf>; (3) PCT, *Taxation of Offshore Indirect Transfers* (draft report published on 15 September 2017), <https://www.oecd.org/tax/discussion-draft-toolkit-taxation-of-offshore-indirect-transfers.pdf>; (4) Transfer Pricing Documentation requirements (not published yet); (5) Tax Treaty Negotiation (not published yet); (6) Base Eroding Payments (not published yet); (7) Supply Chain Restructuring (not published yet); and (8) Assessment of BEPS Risks (not published yet).

Besides the toolkits, in 2016 the PCT published a comprehensive report on the effectiveness of support in building tax capacity in developing countries, which has reiterated actions that could improve technical assistance and/or capacity building²⁶:

- reviewing and/or developing a diagnostic tool or framework for assessing cross-border tax issues (problems, risks and options for revenue strategy);
- developing mechanisms to create coordinated plans for development providers' work on BEPS package implementation and wider international tax issues;
- achieving coordination between providers and recipients of capacity building support in a country: "whole of government" and "whole of institutions" approaches;
- reviewing the range of result indicators used to establish frameworks and guidance to track progress on tax policies and administration to gain clear and common measures of the effectiveness of support;
- gathering and disseminating experiences and results of tax development programmes; and
- producing comparable and reliable data on revenue statistics and key tax policy parameters, and building statistical capacity.

2.3.2 United Nations (UN)²⁷

The UN Committee of Experts on International Cooperation in Tax Matters²⁸ (the Committee) is responsible for keeping under review and update, as necessary, the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It also provides a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities and assesses how new and emerging issues could affect this cooperation. The Committee is also responsible for making recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition. In all its activities, the Committee gives special attention to developing countries and countries with economies in transition. Accordingly, this section aims to explain further the latest work of the UN Committee on these matters.

²⁶ PCT Report, *Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries* (2016); available at <http://www.oecd.org/ctp/enhancing-the-effectiveness-of-external-support-in-building-tax-capacity-in-developing-countries.pdf>.

²⁷ This section is based on the contribution of Mr Harry Tonino and Mr Jacques Sasseville, Financing for Development Office, and information and documents available on the [UN webpage](http://www.un.org/esa/ffd/index.html) at <http://www.un.org/esa/ffd/index.html>, accessed in October 2017.

²⁸ The Committee's Membership mandate expired in July 2017. A new Committee Membership was appointed in August 2017 and met in October 2017. A new Subcommittee on BEPS was not established.

In 2013, in response to the BEPS Project, the Committee established the Subcommittee on BEPS Issues for Developing Countries (Subcommittee on BEPS) with the main objective of helping to inform developing countries addressing base erosion and profit shifting issues; helping to facilitate the input of developing country experiences and views into the ongoing UN work, as appropriate; and helping to facilitate the input of developing country experiences and views into the BEPS Action Plan.²⁹ In 2015, under this mandate, the Subcommittee on BEPS presented to the Committee a report on the results of a questionnaire drafted by the UN on how developing countries view and prioritize the BEPS Project issues.³⁰ The Subcommittee concluded that transfer pricing (Actions 8–10), disclosure of aggressive tax planning (Action 12) and CbCR (Action 13) were of high priority for developing countries. In addition, the Subcommittee also extracted from the answers that the digital economy (Action 1) and the avoidance of permanent establishment status (Action 7) were relevant for developing countries.

After the final BEPS package was released in 2015, the Subcommittee presented to the Committee³¹ their recommendations on the possible changes to the UN Model to tackle base erosion and profit shifting issues, based on BEPS Actions 6 and 7 recommendations and taking into account the views and needs of developing countries. As a result, the Committee approved the 2017 update of the UN Model, which includes changes to prevent taxpayers from using the provisions of tax treaties improperly to obtain treaty benefits, in line with BEPS Actions 6 and 7.³²

The 2015 report of the Subcommittee on BEPS also highlighted that lack of information and capacity building were common issues for developing countries. The work of the Committee on capacity building was devoted to the publication or updating of practical guides on different subjects (e.g. tax treaty negotiation and administration, transfer pricing, protection of the tax base and dispute resolution).³³ Some of these guides were recently updated to

²⁹ The Subcommittee was mandated to draw upon its own experience and engage with other relevant bodies, particularly the OECD, with a view to monitoring developments on base erosion and profit shifting issues and communicating on such issues with officials in developing countries (especially the less developed) directly and through regional and interregional organizations.

³⁰ UN, *Subcommittee on Base Erosion and Profit Shifting for Developing Countries* (E/C.18/2015/CRP.11), dated 12 October 2015. It is stated in the Report that the results are based on 13 answers to such a questionnaire.

³¹ UN, *Committee of Experts, Twelfth Session, Base Erosion and Profits Shifting* (E/C.18/2016/CRP.10), dated 4 October 2016; available at http://www.un.org/esa/ffd/wp-content/uploads/2016/10/12STM_CRP10_-beps.pdf

³² Some of the changes based on BEPS Actions recommendations are: amendment of the title and preamble of the Model Convention; a new general anti-abuse rule (a new limitation on benefits clause, alternative to the application of a principal purpose test); a new version of article 1, which includes a fiscally transparent entity clause and a savings clause; a revised article 4, which includes a new tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals; and a modified article 5 that has the goal of preventing the avoidance of permanent establishment status.

³³ The UN practical guides include: *Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries* (2013), available at http://www.un.org/esa/ffd/documents/UN_Handbook_DTT_Admin.pdf; *Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (2016), available at http://www.un.org/esa/ffd/wp-content/uploads/2016/05/manual_btt.pdf; *Handbook on Selected Issues in Protecting the Tax Base of Developing Countries* (2015, updated in 2017), available at <http://www.un.org/esa/ffd/wp-content/uploads/2015/07/handbook-tb.pdf>; *Practical Manual on Transfer Pricing for Developing Countries* (2012, updated in 2017), available at http://www.un.org/esa/ffd/documents/UN_Manual_TransferPricing.pdf; and *Handbook on Selected Issues in the Taxation of the Extractive Industries and Developing Countries* (2017). In addition, the former Membership of the Committee agreed upon on preparing a handbook on dispute avoidance and resolution (2017) and updating the guide to the mutual agreement

reflect the outcome of the BEPS Project in view of the needs of developing countries, but they do not fully adopt BEPS recommendations. For example, the 2017 update to the Manual on Transfer Pricing included a specific section on safe harbours that only deals with low-value adding services, cost contribution arrangements and the treatment of intangibles in line with BEPS Actions 8–10 recommendations. In 2016, the Financing for Development Office (FfDO) initiated the “United Nations Capacity Development Programme on International Tax Cooperation”,³⁴ which focuses on:³⁵

- disseminating the Committee’s outputs through courses and other training materials on the UN Model and the UN Transfer Pricing Manual;
- development of practical tools, including the Handbook on Administration of Tax Treaties, the Handbook on Tax Base Protection and practical portfolios;³⁶
- country-level technical assistance work, mostly training; and
- online courses on tax treaties and transfer pricing.

The Capacity Development Unit of the FfDO carries out this technical assistance. The nature of its missions can be both short and long-term, depending on the specific project. It has a priority focus on double tax treaties, transfer pricing and, more recently, tax base protection. In 2017, it has delivered a regional workshop on tax treaties and base-eroding payments in Kenya³⁷ and a regional seminar on international taxation in Colombia,³⁸ and it will deliver, before the end of 2017, a workshop on practical issues in protecting the tax base in Ethiopia³⁹ and a course on transfer pricing in Swaziland.⁴⁰ The Unit has also delivered country-level technical cooperation programmes in four countries: Angola and Paraguay (tax treaties); Dominican Republic (tax incentives); and Ecuador (transfer pricing). During 2017, it also aims to expand its technical cooperation activities, especially in tax

procedure of 2012, and this work will be taken over by a new Subcommittee on Dispute Avoidance and Resolution established during the Committee session in October 2017.

³⁴ UN, Report on the UN Committee’s 14th session (April 2017); available at http://www.un.org/esa/ffd/wp-content/uploads/2017/06/ICTM_Report_14Session.pdf. Presentation by Dominika Halka and Harry Tonino, *Capacity Development Work on International Tax Cooperation: Update*; available at <http://www.un.org/esa/ffd/tax/tenthsession/PresentationSecretariat.pdf>.

³⁵ Based on a presentation by Jacques Sasseville and Harry Tonino “Capacity Development Work on International Tax Cooperation: Overview and Update” delivered at the Committee’s 15th session (October 2017).

³⁶ The practical portfolios include the practical portfolios on protecting the tax base of developing countries on the following topics: taxation of services, countering base-eroding payments of interest, countering base-eroding payments of rents and royalties, and a forthcoming one on general anti-abuse rules.

³⁷ Organized in collaboration with ATAF, the Kenyan Revenue Authorities and the financial support of Italy. Tax officials from 32 countries participated in the workshop.

³⁸ Organized in collaboration with CIAT and the financial support of Germany and Spain. Tax officials from 21 countries participated in the seminar.

³⁹ Organized in collaboration with the Economic Commission for Africa and the financial support of Italy.

⁴⁰ In cooperation with the ATAF.

treaties and BEPS, to Angola, Dominican Republic, Mongolia, Panama, Tanzania, and Trinidad and Tobago.⁴¹

As described above, the UN capacity building work does not limit itself to BEPS, but takes a broader approach. The Capacity Development Unit deals with specific BEPS issues in some of their missions, for example, BEPS treaty-related provisions and/or the MLI.

UN observations concerning BEPS country priorities, challenges or needs

Although it is undisputed that base erosion and profit shifting is a priority in some of the developing countries, in some other countries it is not. In several cases, the countries have other tax priorities. Along the same line, concerning BEPS, many developing countries have expressed a positive view with respect to some BEPS recommendations, e.g. the minimum standard on treaty shopping (Action 6) and avoidance of PE status (Action 7). On the other hand, other BEPS recommendations are not considered to be priorities, for example, the minimum standard on dispute resolution (Action 14). This would be due to limited or no previous experience in mutual agreement procedures.

It is expected that many BEPS tax treaty-related issues will be included in a 2017 UN Model update, which will be the basis for further capacity building.

In October 2017, the UN has identified, as issues that are of particular concern to developing countries not addressed directly by the BEPS project: the taxation of capital gains by source countries on the (indirect) transfer of assets located in their countries; the taxation of fees for (technical) services by source countries; the taxation of rents and royalties (payments for the right to use tangible or intangible property) by source countries; and the use of statutory general anti-avoidance rules in domestic law to stop taxpayers from using abusive tax avoidance arrangements and their relationship with the provisions of tax treaties.⁴²

2.3.3 International Monetary Fund (IMF)⁴³

One of the IMF's core functions is the provision of technical assistance on policy, law and administration for domestic and international taxation. It provides such assistance in over

⁴¹ Information based on a presentation by Jacques Sasseville and Harry Tonino "Capacity Development Work on International Tax Cooperation: Overview and Update" delivered at the Committee's 15th session (October 2017).

⁴² These issues are dealt with in the *Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*.

UN, *Committee of Experts, 15th session of October 2017, Capacity Development Programme in International Tax Cooperation, Note by the Secretariat (E/C.18/2017/8)* available at http://www.un.org/ga/search/view_doc.asp?symbol=E/C.18/2017/8.

⁴³ This section is based on the contribution of Mrs Victoria Perry, Immediate Office Assistant Director, and Mr Ruud De Mooij, Tax Policy Division Chief, and information and documents available on the [IMF webpage](http://www.imf.org/external/index.htm) at <http://www.imf.org/external/index.htm>, accessed in September 2017.

100 countries annually, led by more than 60 senior taxation professionals based in its headquarters. The assistance is mostly bilateral, but will from time to time extend to specific regions. The IMF pays specific attention to each country or region and its particular needs, and tailors the technical assistance accordingly. Although the country-specific analysis and recommendations are confidential, the principles upon which these are based are published in the form of a variety of publications available on the IMF website. The IMF's has a yearly plan for the provision of technical assistance, which includes sometimes multiple year projects; this plan is, however, not publicly available.

The IMF occasionally collaborates with regional organizations as well as other IOs, especially on analytical and general tax policy work. It collaborates with partners in the PCT to coordinate and improve the effectiveness of the capacity building support, for example, by leading work on the development of Medium-Term Revenue Strategies. In a joint initiative with the WBG, it has started the development of a public diagnostic framework for tax policy, to complement a tool that is already operational for revenue administration.⁴⁴

IMF observations concerning country BEPS priorities, challenges or needs

Technical assistance by the IMF has a considerably broader focus than BEPS package implementation, covering the entire spectrum to tax policy design, the legal framework and tax administration. In its capacity development, the IMF is not directly bound by BEPS implementation issues, instead it focuses on what countries actually need and what are their priorities. Its technical assistance does not exclude BEPS package implementation if this is deemed appropriate; BEPS issues are the main focus if this is requested by the country and a priority for it (often, BEPS issues are part of a broader tax policy strategy).

Many countries receiving technical support under OECD initiatives may not have the capacity to fully absorb that support and, therefore, may need additional guidance or an alternative approach (some of which are being developed by the PCT in the form of toolkits). While some countries may lose tax revenue due to international tax planning or tax avoidance, they might still need to focus their efforts on domestic tax legislation and administration, where payoffs in terms of revenue, efficiency and equity are higher.

For example, assistance in updating outdated and non-useful tax treaties is of great importance and the MLI could partly help. At the same time, based on its experience, the

The IMF provides technical assistance and training to officials in member countries ("capacity development") to help countries build strong institutions and boost skills to formulate and implement sound macroeconomic and financial policies. Capacity development, which is closely linked to the IMF's surveillance and program engagement, is demand-driven. See also the [IMF Annual Report 2016](http://www.imf.org/external/pubs/ft/ar/2016/eng/wwd-capacity.htm), available at <http://www.imf.org/external/pubs/ft/ar/2016/eng/wwd-capacity.htm>.

⁴⁴ TADAT (Tax Administration Diagnostic Assessment Tool) is a standardized, evidence-based diagnostic tool for assessing the health of a country's tax administration.

IMF may also question whether certain developing countries should negotiate (new) tax treaties at all. This would depend on the assessment of costs and benefits,

Moreover, many developing countries have various important base erosion and profit shifting concerns that are not covered by BEPS, for example, the offshore indirect transfer of assets located in a country. Tax incentives are also an important source of tax leakage in developing countries. This is an area where the IMF and WBG have done a considerable amount of work (and together with PCT partners, a toolkit has been developed), but tax incentives are still a main problem for many countries.

The IMF considers that there can be a certain amount of overlap of capacity developments initiatives in certain countries. The PCT aims to help avoid this, most notably in cases where a medium-term revenue strategy (MTRS) is developed. Under such an MTRS, the leadership and coordination of technical assistance efforts should come from the country itself, as this would be more efficient and effective.

2.3.4 World Bank Group (WBG)⁴⁵

The main objective of the WBG's work on international taxation is to improve countries' legal, regulatory and administrative tax enforcement capabilities to address risks of tax revenue losses linked to cross-border activities. The WBG's work is primarily based on countries' demand (initiated generally by WBG offices in each country); and also by the global tax agenda set by the PCT, the Addis Tax Initiative and the G20 mandates. It also works closely with regional organizations and donors. In practice, the WBG's work results in the publication of research and guidance on specific tax matters, and training and assistance at regional and country level.

Main priorities have been the work on transfer pricing and, more recently, on tax treaty policy. The WBG began its work focusing on designing and implementing transfer pricing regimes in developing countries. Since then, it has moved to work on specific transfer pricing areas and on more general international taxation issues. Current areas of work and research include:

- transfer pricing: putting in place a workable transfer pricing regime, considering the limitations on comparability and application of some methods; specifically, the use

⁴⁵ This section is based on the contribution of Mr Richard Stern, Lead Tax Specialist of the GTT, the GTT paper *International Taxation – Defining the GTT program, objectives & future directions* (version of 13 January 2017) and information available on the [WBG webpage](#). This section mainly deals with the work of the Global Tax Team (GTT) of the WBG Equitable Growth, Finance and Institutions Vice Presidency (EFI). Within the WBG, expertise on tax is mostly focused in EFI. EFI's nine-member Global Tax Team (GTT) is responsible for tax matters and programmes.

of safe harbours (as a tool to overcome implementation challenges where there is data scarcity or a lack of tax administration resources);

- transfer pricing in the extractive sector and the “sixth method” (development of guidance on selection of the most appropriate method and its application);
- TP-BEPS framework on risk (specific issues would include implementation of the “substance” requirement and audit guidelines);
- dispute resolution (review of basic organizational issues and processes);
- interest deduction limitation (detailed guidance on practical implementation);
- tax treaty (review of country policy considering the equation between getting additional foreign investment and giving up substantial taxation rights and the implementation of domestic rules to administer them); and
- source–residence issues, including the basic choice between worldwide taxation or territorial taxation (considering the practical limitations on EOI, including collecting and analyzing information on foreign–source income derived by resident taxpayers).

WBG observations concerning BEPS country priorities, challenges or needs

The WBG’s work encompasses BEPS, but goes well beyond due to countries’ requests and needs. It assists countries, where they want to work on BEPS package implementation, in the specific areas identified by those countries. Many countries may have felt pressure to join the Inclusive Framework and to implement the minimum standards, in which the WBG could offer assistance to achieve the next level of implementation beyond the formal implementation (e.g. application of an LOB or PPT tax treaty provision, which entails a particular analysis and expertise). In this sense, the WBG work is more operational and through assistance to developing countries also considers how much a country would benefit from implementing the BEPS package, considering its tax administration’s capacity. A positive effect of BEPS has been to significantly raise country awareness on whether countries are adequately protecting their tax base. However, a subsequent choice is the determination of the country’s capacity to be allocated to BEPS (which certainly means allocation of limited resources) considering the expected return. Therefore, although it is not its priority to do training about BEPS, the WBG has done so to a certain extent.

Besides the minimum standards (2017 WBG work on minimum standards encompasses sixteen countries), specific requests from countries relate to the implementation of BEPS Actions 3 and 4 (2017 WBG work on these BEPS Actions covers six countries). The WBG is also specifically working with developing countries on how to use the CbCR information that would be received by those countries, for example, how to use it for risk assessments. In addition, the work of the WBG includes developing a matrix to determine how much BEPS package implementation helps countries, for example, in terms of additional revenue or investment.

The WBG acknowledges that there are multiple initiatives in this field and a certain degree of coordination would be better, which the PCT could be able to achieve. Since its work is mainly demand driven, the WBG has no experience in conflicting or overlapping work in a specific country.

2.3.5 Inter-American Center of Tax Administrations (CIAT)⁴⁶

CIAT's operations are driven primarily by its strategic plan⁴⁷ and by countries' demand, especially in the case of technical assistance.⁴⁸ The work done by CIAT has been broader than implementing specific BEPS recommendations, mostly due to the needs and demands of member countries.⁴⁹ Specific areas of work on BEPS have included, for example, tax treaty anti-avoidance measures and advice for the implementation of the minimum standards following adherence to the BEPS Inclusive Framework.

CIAT observations concerning BEPS country priorities, challenges or needs

In 2017, countries' priorities have changed, as many countries have joined the Inclusive Framework:⁵⁰

- high-priority BEPS Actions: Action 7, Actions 8–10 and Action 13;
- medium-priority BEPS Actions: Action 1, Action 5, Action 6 and Action 15;⁵¹ and
- low-priority BEPS Actions: Action 2 and Action 4.⁵²

Specifically, regarding BEPS Actions 8–10, CIAT identifies the following issues as relevant for the Latin America region: low value-added services; re-characterization of operations;

⁴⁶ This section is based on the contribution of Mr Gonzalo Arias, CIAT Director of International Cooperation and Taxation and information and documents available on the [CIAT webpage](https://www.ciat.org/?lang=en) at <https://www.ciat.org/?lang=en>, accessed in October 2017, including the CIAT Strategic Plan, available on the CIAT [website](https://ciat.org-public.sharepoint.com/SiteAssets/GestionInstitucional/PlanEstrategico/2017_strategic_plan_2017_2021_CIAT.pdf) at https://ciat.org-public.sharepoint.com/SiteAssets/GestionInstitucional/PlanEstrategico/2017_strategic_plan_2017_2021_CIAT.pdf.

⁴⁷ CIAT's 2017-2021 Strategic Plan provides that the work relating to international taxation will focus on developing actions against fraud, tax evasion and avoidance. Such actions include the promotion of EOI; support for implementing legislative and administrative reforms to fight base erosion and profit shifting; sharing knowledge on abusive international tax planning schemes; and coordination with IOs.

⁴⁸ Specific areas of work have included capacity building in transfer pricing, BEPS aspects related to tax treaties, definition of aggressive fiscal planning, definition of tax havens and transactions with those jurisdictions and digital economy. For example, currently, CIAT is providing specialized medium-term counselling on transfer pricing (Bolivia and Guatemala), EOI (El Salvador) and more generally international taxation auditing (Honduras). CIAT also provides short-term technical assistance based on demands of member countries; examples of main areas of work are: drafting regulations to the transfer pricing law and proposals for reform of transfer pricing law (Nicaragua); advice for the implementation of the minimum standards following adherence to the BEPS Inclusive Framework (Panama); advice for the establishment of a transfer pricing policy within the framework of the Tax Inspectors Without Borders programme (Costa Rica); training on tax treaties (Paraguay, Panama, Trinidad and Tobago) and assistance on development of a risk model to identify transfer pricing cases (Ecuador).

⁴⁹ For example, between 2016 and mid 2017, CIAT carried out 101 technical assistances, out of which 23 were related to BEPS issues.

⁵⁰ In 2014 CIAT, the WBG and International Tax Compact (ITC), concluded that all BEPS Actions have a similar level of priority in Latin America. There was a slight positive bias towards Actions 8-10 since various Latin American and Caribbean countries had been focused on transfer pricing. There was a negative inclination towards Actions 2, 3 and 14, probably due to the lack of regional experience in such areas, lack of understanding of those BEPS risks, complexity of the issues covered by such actions and/or the country's own economic context.

⁵¹ Actions 6 and 15 have medium or even low priority for countries that do not have a (large) treaty network.

⁵² More developed regional tax administrations can consider these actions more relevant. Other BEPS Actions would have a different priority level according to the profile of the country and its tax administration.

reporting of cost-sharing arrangements; APA; definition, identification and valuation of intangibles; and usefulness and applicability of the profit split method in the extractive industry.

CIAT has identified the following country challenges for BEPS implementation:

- lack of capacity, i.e. resources and trained staff that can be dedicated to BEPS;
- weak position of countries in international BEPS discussions, resulting in very limited contribution to standard setting; and
- difficulty to access useful information to apply BEPS recommendations formally adopted (e.g. for Action 2 and Actions 8–10).

Countries' proposals to facilitate the implementation of BEPS include to:

- increase tax authorities' training programmes for a better understanding of different BEPS issues;
- invest in tax administrations' capacities (e.g. IT infrastructure and skilled staff for effective EOI);
- strengthen regional networks to achieve an exchange of views, good practices and documentation (this could result in a better input at international level standard setting); and
- create a library or database of BEPS-related documents in Spanish and offer simultaneous translation in international meetings.

CIAT has also identified other non-BEPS priorities. Although these issues are not directly related to BEPS, they are relevant for Latin American and/or Caribbean countries:

- awareness-raising actions when drafting and implementing tax reforms;
- strengthen legal framework and sanctioning regimes to encourage greater and better compliance with tax obligations;
- monitor fiscal incentives;
- research alternatives to apply the arm's length principle (e.g. use of simplified measures such as safe harbours, fixed margins and specific anti-avoidance rules);
- develop transfer pricing guidelines more in line with the needs of the region and, in particular, the characteristics of the most relevant activities carried out in the region;⁵³
- research relevant economic sectors to allow tax administrations better understanding; and
- create initiatives to promote corporate social responsibility in relation to tax matters.

⁵³ For example, it has been proposed to analyze in more depth the so-called "sixth method" for the control of operations involving commodities.

2.3.6 African Tax Administration Forum (ATAF)⁵⁴

A substantial part of work performed by the ATAF is allocated to domestic issues (e.g. it has identified the informal sector and cash economy as important areas of work in 2017). The ATAF acknowledges that 50% of the revenue of some African Tax Outlook (ATO)⁵⁵ countries' comes from large taxpayers, high net worth individuals and MNEs, which are widely considered the highest-risk taxpayers because of their aggressive tax planning practices. In order to counteract these practices, the ATAF has developed its own tools, which would adapt the work of the OECD and/or UN to African countries' needs. For example, the ATAF tax treaty model for the African continent "*sought to upgrade previous DTAs which robbed developing countries of their fair share of taxation*"⁵⁶ and the ATAF's Suggested Approach to Drafting Transfer Pricing Legislation sought to provide its members with very effective tools for addressing commodity pricing. According to its strategic plan,⁵⁷ the ATAF intends to make assessments of ATAF member countries' needs at least twice within a five-year period. However, there are no results of assessments on countries' needs publicly available yet.

Observations about ATAF concerning BEPS country priorities, challenges or needs

BEPS Actions identified by ATAF as of highest priority to African countries are Actions 4, 6, 7, 8–10 and 13.⁵⁸

The ATAF established a technical committee that would look at the various BEPS issues as well as developing mechanisms that African countries could use to input the BEPS process.⁵⁹ Under this initiative, the ATAF has prioritized technical assistance on transfer pricing, interest deductibility and permanent establishments. This assistance encompasses training and advice on the tax administration's audits. In 2016, nine members received such assistance.

⁵⁴ This section is based on information available on the [ATAF webpage](https://www.ataftax.org/en/about/overview) at <https://www.ataftax.org/en/about/overview>.

⁵⁵ The "ATO countries" are the twenty-one African countries that contributed to data collection for the African Tax Outlook 2017 (ATAF publication that aims to provide quality information on taxation in Africa).

⁵⁶ ATAF, African Tax Outlook 2017, Second Edition, at 89, box 5.5. Available at <https://www.ataftax.org/en/news-library/documents>

⁵⁷ In 2017, ATAF strategic plan aims to institutionalize a wide range of services to its African member administrations (members) (e.g. (online) courses and long-term programmes; technical assistance on issues that impact revenue collection; and drafting technical papers on tax policy issues, such as illicit financial flows, allocation of taxing rights and tax compliance studies.

⁵⁸ N. Monkam (ATAF Director Research), Presentation on *Ensuring a sound tax base in developing countries: Are the current international initiatives sufficient?* (July 2015); available at <http://effectivecooperation.org/wp-content/uploads/2015/07/Nara-Monkam-ATAF.pdf>.

⁵⁹ ATAF Consultative Conference on the New Rules in the Global Tax Agenda (February 2014); available at http://ataftax-dev.co.za/images/atrn_documents/Global%20Tax%20Agenda%20-%20ATAF%20Discussion%20Paper.pdf. ATAF website, Products & Services, [EOI section](#); available at <https://www.ataftax.org/en/products-services/technical-assistance/exchange-of-information>.

The ATAF seems to have filtered some of the BEPS recommendations, considering those more relevant to its member countries and creating its own “tools” (e.g. model legislation). It does not seem to have a particular public stand on the implementation of the BEPS package and the Inclusive Framework, nor a systematic approach to BEPS implementation in Africa. As such, the BEPS package does not seem a specific priority within its strategic plan and activities.⁶⁰

The main areas of ATAF’s work would include EOI and interest deductibility limitations. A main challenge for African countries to address transfer pricing and other BEPS risks would be obtaining information that is not held in the country.

Beyond BEPS, the ATAF has identified other base erosion issues of high priority to African countries:

- lack of transfer pricing comparability data;
- granting wasteful tax incentives;
- taxation of natural resources
- indirect transfer of assets;
- fraudulent invoicing of trade transactions; and
- informal sector.

The outcome statement of the 2017 ATAF high-level tax policy dialogue stated the need for forging a nexus between tax policy and tax administrations, which is needed to effectively address illicit financial flows (IFFs), improve domestic resource mobilization and to build a more certain investment climate. It acknowledges that, to stem IFFs arising from tax avoidance and evasion, Africa needs to redesign its tax policies and build the capacity of the tax administrations; however, it does not make any reference to the BEPS package for accomplishing this challenge. More specifically, this high-policy dialogue statement identifies a major loss of tax through harmful tax competition and the granting of wasteful tax incentives, particularly in the extractive sector. It was also noted that a key part of the role of tax administrations is providing tax policy advice to Ministries of Finance, and the ATAF is playing a vital role in supporting tax administrations in that work.⁶¹

⁶⁰ For example, the 2017 Strategy Plan and the African Tax Outlook publication only make very limited and indirect reference to BEPS. In the ATAF Calendar of Events, about 5 out of 40 events deal with international taxation matters and/or BEPS. Such events relate to the ATAF Model Legislation on Interest Deductibility and the approved OECD approach, and “tax treaties & (post-)BEPS”. Those events relate to organizational, training, academic matters. [ATAF Calendar of Events](https://www.ataftax.org/en/news-library/calendar-of-events), available at <https://www.ataftax.org/en/news-library/calendar-of-events>, accessed on 19 September 2017.

⁶¹ ATAF High-Level Tax Policy Dialogue to discuss building a stronger nexus in Africa between tax policy and tax administration – Outcome Statement of 17 August 2017; available at https://www.ataftax.org/en/component/jdownloads/send/31-statements/34-ataf-high-level-tax-policy-dialogue-forging-the-nexus-between-tax-policy-and-tax-administration-in-africa-outcome-statement-17-august-2017?option=com_jdownloads.

2.4 Main findings from the desk study

Main findings from the desk study are as follows:

(1) Priorities for countries that joined the Inclusive Framework

The Inclusive Framework sets, in fact, part of the priorities of some developing countries in fighting base erosion and profits shifting since, by joining the Inclusive Framework, they committed to implement the agreed minimum standards. However, these countries' priorities and, accordingly, challenges and needs for implementing these minimum standards are different and depend on their tax system and tax administration's state of development. The situation of each country should, therefore, be assessed also considering whether basic conditions underlying its legislation and administration are sufficiently met.

(2) Priorities for countries that joined the Inclusive Framework as well as countries that have not joined it

The whole BEPS package (which goes beyond the minimum standards) is clearly relevant, in protecting their tax base, for developing countries whether or not they have not joined the Inclusive Framework. However, priorities would vary depending on the specific base erosion and profit shifting issues of each country is confronted with, which may also cover issues not dealt with by the BEPS package. Countries, international organizations (IOs) and regional tax administration organizations have clearly identified those other issues. For example, most recently in October 2017, the UN has identified, as issues that are of particular concern to developing countries not addressed directly by the BEPS project: the taxation of capital gains by source countries on the (indirect) transfer of assets located in their countries; the taxation of fees for (technical) services by source countries; the taxation of rents and royalties (payments for the right to use tangible or intangible property) by source countries; and the use of statutory general anti-avoidance rules in domestic law to stop taxpayers from using abusive tax avoidance arrangements and their relationship with the provisions of tax treaties.

(3) Relevant work done by IOs and regional tax administration organizations

IOs and regional tax administration organizations have integrated specific aspects of the BEPS package considered more relevant for developing countries in their work and capacity building. For example, in the 2017 update of the UN Manual on Transfer Pricing, specific sections were included on low-value adding services, cost contribution arrangements and

the treatment of intangibles, in line with BEPS Actions 8–10 recommendations. The capacity building and technical assistance of these organizations is clearly much broader than the BEPS project. Implementation of the BEPS package, specifically, does not seem to be the first priority of some of these organizations when assisting developing countries while fundamental flaws still exist in their tax legislation or tax administration.

As mentioned in literature, several BEPS Actions recommendations may be considered complex, hard to administer and ineffective for developing countries, and probably such rules may need to be formulated or adapted to reflect the circumstances, capacity and priorities of developing countries. A considerable gap also seems to exist between capacity building efforts and institutional structures, which currently may not sufficiently facilitate the active engagement of developing countries with formulating policy and regulatory reforms. Capacity building therefore runs the risk of scarce resources being used in attempting to improve the enforcement of rules that are complex, hard to administer and may not be perceived as solving priority issues as observed by developing countries.⁶² In our view, this underlines the need to properly consult and discuss with developing countries which measures are appropriate in their specific circumstances.

General challenges and needs of developing countries concerning implementation of the BEPS recommendations, and other measures to counter base erosion and profit shifting issues, have been identified by IOs and regional tax administration organizations. For example, the report of the UN Subcommittee on BEPS highlighted that lack of information and capacity building were common issues for developing countries (e.g. *see* sections 2.3.2 and 2.3.5). IOs, and later the Platform for Collaboration on Tax (PCT), have also identified measures and concrete actions for more effective capacity building.⁶³ Essentially, this entails pre-diagnosis, planning and coordination (among providers and within each country), measuring progress and evaluating assistance impact, sharing experiences and building statistical capacity (e.g. *see* section 2.3.1). The latest strategies and proposals build on previous reports from 2014, and reiterate their recommendations. Recent OECD and PCT report(s) described progress and results that have been achieved but, nevertheless, several aspects of these strategies and recommendations have not yet been (fully) delivered. We have not yet been able to find publicly available information about a PCT agreed work plan or further PCT coordination work for implementing its proposed actions or recommendations (besides the toolkits). However, commitments to improve the coordination and coherence of the capacity building remain very relevant. In 2016, the PCT pointed out the issue of several bilateral donors active in the same country at the same time,

⁶² See in this context, for example, Sol Picciotto, DIE Discussion Paper, *The G20 and the Base Erosion and Profit Shifting (BEPS) Project* (2017).

⁶³ The July 2015 Addis Ababa Action Agenda encourages countries to undertake diagnostic assessments of their tax systems to identify key areas where capacity building and reform measures will be most effective.

while other countries do not receive support. Especially important is also implementing an objective system to measure the effectiveness of the assistance to developing countries. The survey study presented in section 3 may be considered as a starting point for measuring the BEPS package implementation progress and the effectiveness of capacity building assistance.

Besides these findings, the following important questions were addressed:

(4) Question whether or not developing countries should join the Inclusive Framework

This question entails fundamental tax policy choices. The BEPS package can be considered a major international development in combating base erosion and profits shifting which may also affect developing countries. In order to be effective, a worldwide endorsement would be important and thus participation in the Inclusive Framework recommended. However, the special position of developing countries (as regards the types of measures most important for them, but also their legal and administrative situation, capacity and limitations) need to be taken into account. Each developing country should assess the relevance of joining the Inclusive Framework in its own particular situation. In our view, offering effective assistance and support needed to achieve the situation of being able to deal effectively with the, for them, most important issues regarding base erosion and profit shifting would enable those countries to make an informed decision about joining the Inclusive Framework.

(5) Question whether or not developing countries should sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)

The MLI may be a very valuable tool to swiftly add anti-avoidance provisions to a large number of tax treaties. Whether the MLI is more convenient than bilateral renegotiations of tax treaties depends on the particular situation of each country and its treaty partners. When joining the MLI, each country must carefully decide which treaties it wants to be covered by it and which options it wants to choose, taking into account its particular tax treaty network and policy and also the position of and its relation to its treaty partners. In view of the above mentioned aspects some developing countries may require assistance to be able to make the decision to join the MLI and in making the various choices required.

(6) Question whether or not CbCR should be made public

Under CbCR, as provided by BEPS Action 13 minimum standard, large MNEs must submit specific information to the tax authorities, and those authorities will exchange this information with tax authorities of other countries where the MNE group entities operate, subject to confidentiality and appropriate use. There is an on-going discussion concerning public Country-by-Country Reporting (pCbCR), i.e. making the confidential CbCR fully

public. There are many arguments in favour or against this idea. In view of the various complexities and sensitivities, we would consider it advisable for developing countries to first acquire some experience with the use of confidential CbCR, as provided by BEPS Action 13 minimum standard. At a later stage, and based on the experience acquired, it could be considered in consultation with the countries providing the information, to in the future make such information public.

(7) Question whether there are specific considerations relating to the extractive industries

Extractive industries are of great importance for many developing countries. BEPS Actions recommendations may also be relevant for the extractive industries e.g. Action 4 (limitation of interest payments), Action 6 (preventing treaty abuse), Action 7 (preventing artificial avoidance of permanent establishment), Action 8–10 (transfer pricing) and Action 13 (increasing transparency – CbCR). However, the various aspects of the fiscal regime for extractive industries (which usually comprise also other types of government take than taxation) clearly goes beyond BEPS concerns and recommendations, which broader topic could require separate attention as, for instance, recently done by the UN.

3. Survey Study on BEPS Implementation by Partner Countries of German Development Cooperation

3.1 Introduction

This section provides the main findings from the answers to the survey sent to GDC partner countries. Section 3.2 briefly describes the questionnaire, the countries and the time frame of this research. Section 3.3 presents the main findings from the answers to the survey, taking also into account the current commitments entered into by the countries that have joined the Inclusive Framework.

For the actual survey in English, *see Annex I*. For the answers to the survey and further information about the survey itself and the survey process, *see Annex II*. This annex presents the main answers in an anonymized manner, aiming to describe them objectively and in summary.

3.2 Methodology

Survey concept

IBFD designed a questionnaire specifically for the purpose of this study, taking into account the input provided by GIZ. The main goal in designing the questionnaire was to be able to assess the current state of affairs in GDC partner countries concerning the implementation of selected BEPS Actions and their specific experiences, challenges and needs.

The survey was divided into different areas that may be considered as customary steps that would be necessary for the development of a specific aspect of a country's tax system, including the implementation of BEPS recommendations (e.g. strategy setting, legislation and administrative implementation). Considering these areas, the aim was for senior tax policymakers, tax legislators and tax administrators to answer the survey; however, except for one country, only senior tax official(s) from the tax administration answered the questionnaire. Accordingly, survey results refer to the tax administration, as those results provide a better overview from the tax administration's point of view.

In consultation with GIZ, it was considered that, in order to optimize the chances of countries being prepared to answer the survey, the time required to answer the entire questionnaire should be limited. Thus it was decided to limit the questionnaire to the most relevant aspects of the BEPS Actions referred herewith under Block B.

Survey structure

The questionnaire consisted of five separate blocks, each containing a number of questions and sub-questions:

- Block A, **Country Strategy**, dealt with countries' general tax strategy and their priority setting regarding possible implementation of BEPS Actions;
- Block B, **Legislative Framework of Selected BEPS Actions**, dealt with the current country's legislative framework concerning certain aspects of selected BEPS Actions, i.e. Actions 4, 6, 7, 8–10, 13 and 15;
- Block C, **Organizational Structure**, dealt with the organizational structure of the country's tax authorities that would be necessary to implement the selected BEPS Actions;
- Block D, **Staff Expertise**, deals with the level of knowledge and skills within the country's tax authority that would be required to implement the selected BEPS Actions; and

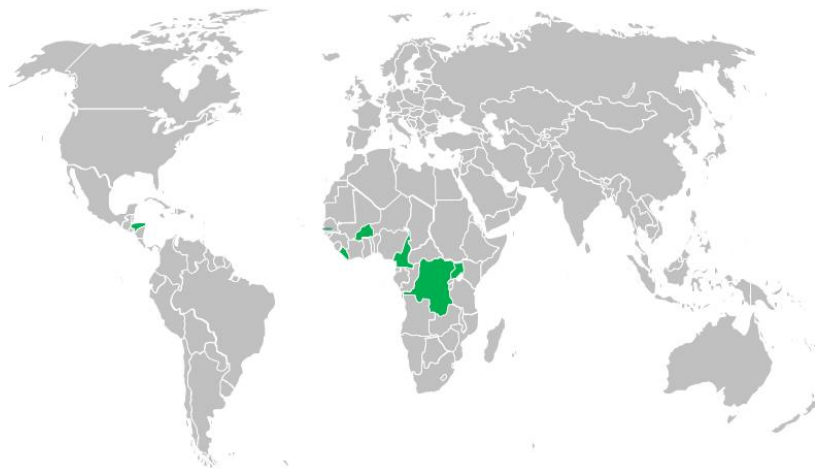
- Block E, **IT Infrastructure**, deals with the infrastructure and trained staff that would be necessary to implement transfer pricing legislation relating to BEPS Action 13 (Country-by-Country Reporting), including also the use of the received information.

Survey target countries

Survey target countries are German Development Cooperation partner countries. GIZ selected 19 countries (15 sub-Saharan countries and 3 Central American countries): Benin, Burkina Faso, Cameroon, DR Congo, Egypt, El Salvador, Gambia, Ghana, Guatemala, Honduras, Kenya, Liberia, Malawi, Mozambique, Rwanda, South Africa, Tanzania, Uganda and Zambia.

Surveyed countries

Seven out of nineteen countries completed the survey:



- Burkina Faso;
- Cameroon;
- DR Congo;
- Gambia;
- Honduras;
- Liberia; and
- Uganda.

Four of these countries have joined the Inclusive Framework: Burkina Faso, Cameroon, DR Congo and Liberia.

Generally, these countries are characterized as low-income (Burkina Faso, DR Congo, Gambia, Liberia and Uganda) and low middle-income countries (Cameroon and Honduras).⁶⁴ In terms of tax revenue to GDP, the countries range between 13.62% (Uganda) and 24.42% (Honduras) compared to an average of 19.10% in the case of African countries; 22.80% in the case of Latin American countries; and 34.30% in the case of OECD member countries. In terms of corporate tax to GDP, these countries range from 0.68% (Uganda) and 3.42% (Honduras).⁶⁵ As shown in the table below, available statistical information varies depending on the source; furthermore, we could not find data on corporate income tax revenue-to-GDP with respect to some of the surveyed GDC partner countries.⁶⁶

	IMF		OECD		ATAF	
	Tax Revenue-to-GDP	Corporate Income Tax Revenue-to-GDP	Tax Revenue-to-GDP	Corporate Income Tax Revenue-to-GDP	Tax Revenue-to-GDP	Corporate Income Tax Revenue-to-GDP
Year	2014	2014	2015	2015	2015	2015
Burkina Faso	21.41%					
Cameroon	18.30%		16.40%	3.20%	15.13%	3.20%
DR Congo	14.59%		10.80%	2%		
Gambia	22.45%				19.09%	1.90%
Honduras	24.42%	3.42%	21.20%	3.63%		
Liberia	28.77%				18.55%	1.70%
Uganda	13.62%	0.68%	12.50%	0.90%	12.28%	0.90%

3.3 Main findings from the survey study

This section points out the main findings from the answers presented in **Annex II**, considering also the current commitments from the countries that have joined the Inclusive Framework. The findings aim to highlight the main challenges and needs faced by the surveyed countries.

⁶⁴ The World Bank Atlas method: low-income economies are defined as those with a GNI per capita of USD 1,005 or less in 2016 and lower middle-income economies with a GNI per capita between USD 1,006 and USD 3,955. A definition for the current 2018 fiscal year is available on the [WBG website](#).

⁶⁵ Based on IMF Data [Website and OECD Revenue Statistics](#). OECD (total tax revenue including social security contributions as percentage of GDP in 2015): Africa (16 countries) average: 19.1%; Latin America and the Caribbean average: 22.8%; and OECD average: 34.3%.

⁶⁶ When analyzing this data, we could not find a clear explanation of the methodologies that may explain such differences in the data per country. The OECD statistical data seems to use the IMF statistical data, and ATAF seems to have developed a different methodology that uses the information provided by the African Tax Outlook countries.

Sources: IMF Data [Website \(http://data.imf.org/?sk=388DFA60-1D26-4ADE-B505-A05A558D9A42\)](http://data.imf.org/?sk=388DFA60-1D26-4ADE-B505-A05A558D9A42). OECD (2017), Revenue Statistics in Africa, Figure 1.1, p. 27; and OECD (2017), Revenue Statistics in LAC, Table 1.1, pp. 24, 151 and 168. ATAF (2017), African Tax Outlook (ATO), Table A.1, pp. 66 and 181.

3.3.1 Disconnection between country tax policy and tax administration

Concerning the countries' tax strategic plans (where available at all), there were no or hardly references to implementing BEPS Actions recommendations.

There seems, in some cases, to be a disconnection between the commitments of the country at the policy level and their implementation through a country's tax strategy plan or, even, communication to tax administrators.

Most surveyed countries recognized the need to implement part of the BEPS recommendations and four of them have made a formal commitment to implement the minimum standards by joining the Inclusive Framework.

The next step would be to incorporate this commitment into a country's tax strategy plan with concrete objectives and milestones. This seems to be the case with only one of the surveyed countries. However, this country, which has joined the Inclusive Framework, only expressed that its strategic plan has the general objective to comply with the requirements of the Inclusive Framework, without further specification.

According to the information gathered, none of the other countries' tax strategy plans mentioned, as main areas of focus, the implementation of specific BEPS recommendations.

Tax administrators of two surveyed countries (who completed the questionnaire) did not even seem to know that their countries have joined the Inclusive Framework.

Furthermore, regarding BEPS Action 15, only two countries have signed the MLI. However, tax administrator(s) of one of these countries stated in the survey that this country did not sign it. Moreover, another tax administrator from a country indicated that the country signed the MLI, although it had not actually signed it, based on information from the OECD.

This seems to indicate a lack of knowledge of tax administration officials about the policy decisions made by their governments.

A country's tax strategy plan should, in our view, preferably be publicly available in order to inform and involve all relevant stakeholders (e.g. parliament, corporate and advisory sectors). However, six countries stated that their plan is not currently publicly available (only in the case of one country, the tax strategy plan is available on the website of the tax administration).

3.3.2 Lack of awareness about the specific commitment to implement the minimum standards when joining the Inclusive Framework

There also seems to be a lack of awareness among surveyed countries that have joined the Inclusive Framework about the the need to implement the minimum standards, i.e. that joining the Inclusive Framework involves a commitment to at least implement the minimum standards, which entails specific domestic law and tax treaty amendments and effective implementation of those amendments by the country's tax authority.

Two of the four surveyed countries that have joined the Inclusive Framework did not choose BEPS Actions 6 and 13 (minimum standards) when asked about their intention to implement specific BEPS Actions. One of them has two tax treaties in force and therefore those tax treaties should in principle be amended to incorporate the BEPS Action 6 minimum standards (as those tax treaties do not have such minimum standards provisions e.g. a Principal Purpose Test rule and/or a Limitation on Benefits provision). However, the country has not signed the MLI and stated that it is not currently renegotiating, or planning to renegotiate, tax treaties.

In addition, one country that has joined the Inclusive Framework stated that it does not consider it a priority to implement CbCR.

3.3.3 Current development of the tax system and tax administration makes it difficult to implement BEPS recommendations

Base erosion and profit shifting is relevant to the surveyed countries; however, essential problems in the tax system and tax administration of some of those countries make it difficult to consider to implement the (more sophisticated) BEPS recommendations.

Some surveyed countries stated as main areas of focus basic issues of a country's tax system, e.g. the introduction of a global income tax for companies and individuals, issues relating to taxpayer registration or digitalization of tax procedures.

All except for one of the surveyed countries stated a lack of sufficient IT infrastructure (including IT staff) and some of them even expressed the need for a back-up electrical supply system.

3.3.4 Actual implementation of selected BEPS Actions is rather limited

Countries expressing views on BEPS are giving more priority to the implementation of BEPS Actions 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments), 8–10 (Aligning Transfer Pricing Outcomes with Value Creation) and 13 (Guidance

on Transfer Pricing Documentation), and most effort seems to be devoted to Country-by-Country Reporting (CbCR).

Most countries stated that they are currently implementing CbCR; four countries stated specifically that they have already introduced, or are about to introduce, legislation providing for the confidentiality and appropriate use of the reported information.

Regarding the other Actions, only one country stated to have actually implemented Action 4.

Other countries pointed out base erosion and profit shifting issues not dealt with by BEPS, e.g. the rationalization of exemptions (specifically in the mining sector) and the indirect alienation of assets to avoid capital gains taxation.

3.3.5 Need for determining BEPS recommendations that are most suitable for the country

Countries are generally aware of the relevance of BEPS; however, the next step should be to identify those measures that are most suitable for each country in their own situation and their specific content and implications.

Some BEPS Actions outcomes (e.g. “best practices”) and BEPS minimum standards give choices to countries. Some of these choices are rather complex and require additional expertise and information and, subsequently, policy choices. Surveyed countries may benefit perhaps more from implementing less complex best practices.

For example, regarding BEPS Action 4, the majority of the countries stated that they intend to implement these rules, but when asked which specific best practices, three out of five countries chose the more complex rules to limit deductibility of outbound interest payments (e.g. use of group ratio).

This may not seem very realistic considering the current level of expertise that they stated to have and the need for gathering additional information to implement complex rules.

3.3.6 Tax administration challenges for implementing selected BEPS Actions: lack of fundamental knowledge; lack of staff capacity and specialization; lack of training; lack of technological tools; and lack of IT infrastructure and IT skilled staff

Lack of fundamental knowledge on international taxation

Generally, countries' main challenges relate to a lack of knowledge to deal with fundamental issues of international taxation, e.g. collecting information about non-residents, or understanding and administering tax treaties. One country that has joined the Inclusive Framework expressly indicated its lack of basic understanding on tax treaty matters covered by BEPS Action 6.

In the case of BEPS Action 6, the majority of the surveyed countries stated that a specific unit within the tax administration deals with tax treaties (not necessarily exclusively). However, the results show that the majority of the countries are lacking specialized knowledgeable staff to interpret and apply tax treaties. For example, a country stated, as a challenge, the lack of understanding of treaty shopping. Relating to BEPS Action 6, three out of six countries, that are negotiating or planning to renegotiate tax treaties, also stated that a main challenge is a lack of knowledge and capacity for negotiating tax treaties. These three countries have joined the Inclusive Framework.

Concerning Action 7, two countries stated, as main challenge, knowledge gaps in relation to complex tax schemes.

Concerning Actions 8–10, although most of the countries stated having a middle to advanced level of experience on transfer pricing, two countries stated, as a main challenge, understanding basic transfer pricing issues, for example, the application of the arm's length principle.

Relating to the above, two countries that have joined the Inclusive Framework, stated as a main challenge a lack of knowledge and ability to request and provide information, but they did not refer to the use of the information received.

Lack of staff capacity and specialization, and lack of technological tools

General auditing units, organized on the basis of taxpayers' size, deal with non-resident matters in six countries. Such units generally deal with both resident and non-resident taxpayers, resulting in major capacity issues to sufficiently cover both.

Two countries that have joined the Inclusive Framework have basic challenges concerning the taxation of non-residents, e.g. identifying non-residents or their transactions.

Specifically concerning transfer pricing, only one of the countries that have joined the Inclusive Framework has a specialized transfer pricing unit. Another country, that has also joined the Inclusive Framework, specified that having such a unit is too complex or costly to administer.

Specific issues relating to staff capacity on transfer pricing matters are the difficulty of obtaining documentation on international operations by non-residents, access to external comparables databases and the lack of a risk assessment matrix for audit selection.

Concerning CbCR, two countries that have joined the Inclusive Framework stated also as main challenge the lack of technological tools to exchange and store information. One of them also mentioned issues protecting the confidentiality of the documentation received.

Lack of training on specific selected BEPS Actions

All countries stated that they have attended forms of general training on international taxation issues. However, the majority of the surveyed countries, including the four countries that have joined the Inclusive Framework, stated that they have not received specific training on BEPS Actions recommendations relating to tax treaty matters. In addition, five countries, three of which have joined the Inclusive Framework, stated that they have not received training on CbCR.

Some reasons for this lack of training are, for example, that one country is waiting for the OECD to provide such training, and in other cases the lack of financial resources to attend trainings offered.

Except in the case of one country, most of the training is generally a one-off short-term session. It seems that there is no continuity of training, in terms of a coherent programme over time oriented to the same staff.

Lack of IT infrastructure and IT skilled staff

Only one of the surveyed countries, which has joined the Inclusive Framework, stated that it has an IT infrastructure and IT skilled staff available to implement CbCR.

The other countries stated, as basic challenges to the implementation of CbCR, the lack of necessary hardware, software, and IT staff expertise. For some countries, there is even first the basic need of having a stable electricity supply.

4. Recommendations

Sections 4.1 and 4.2. present general recommendations on how the GIZ and the German Federal Ministry for Economic Cooperation and Development (BMZ) could position themselves to assist GDC partner countries to implement the BEPS package, especially, the minimum standards (and also other measures to deal with other base erosion and profit

shifting issues), and to approach specific issues of relevance for GDC partner countries. Finally, section 4.3 provides some recommendations about the survey study itself.

4.1 Recommendations for further basic assistance to GDC partner countries to implement specific BEPS recommendations

The following types of assistance seem required to enable GDC partner countries to judge the relevance of BEPS Actions recommendations and other relevant base erosion and profit shifting concerns mentioned above and, where considered relevant for them, to effectively implement these.

4.1.1 Generic assistance

Generic training regarding the mainlines of the content of the various BEPS recommendations, and measures to counteract other base erosion and profit shifting issues not dealt with by BEPS, in order enable tax authorities, i.e. tax policymakers, tax legislators and tax administrators, to judge the relevance of those recommendations and other measures in their specific situation.

In some cases, it may appear that more training may need to be given on acquiring knowledge on more basic matters. For example: (1) General training for GDC partner countries' tax authorities on international taxation, transfer pricing or international tax planning to enable them to evaluate country's specific base erosion and profit shifting concerns; or (2) in the case of a country with no or few (outdated) tax treaties in force, specific training could be provided to enable that country to review its treaty policy in order to determine the need to (re)negotiate tax treaties, and only then specific Action 6 anti-avoidance provisions or the MLI could be considered.

Subsequently, tailored-made assistance seems necessary for countries to judge the importance of the various BEPS recommendations in their specific situation.

4.1.2 Tailor-made assistance

For tailor-made assistance, two different situations are identified based on whether countries have joined the Inclusive Framework or not.

- *Assistance for GDC partner countries that have joined the Inclusive Framework*

Decision phase

These countries have in fact decided to implement the minimum standards, and what may remain is a decision about the order in which those standards will be implemented (if not simultaneously possible).

However, it should be noted that (albeit with probably less priority) also those countries may have an interest in other BEPS Actions recommendations and other measures to counteract base erosion and profit shifting issues not dealt with by BEPS (see below under Assistance for GDC partner countries that have not joined the Inclusive Framework).

Planning phase

Specific assistance to the implementation must take into account the particular situation of each country and the time frame for peer review of each minimum standard. For example, for a country with no or few (old) tax treaties, Action 5 minimum standards (preferential tax regimes and exchange of tax rulings) would have relatively more priority than Actions 6 and 14 minimum standards (treaty anti-avoidance and dispute resolution); and Action 13 minimum standards (CbCR) would have priority for also benefiting from receiving information (provided the country has sufficient transfer pricing legislation and staffing to deal with the information received in order to use it for its risk assessments).

The first step is for these countries to gain a full understanding of the legislative and administrative impact of the minimum standards and subsequently to plan their deadlines for implementation, and to draw up a concrete plan of action to meet these commitments. For example, this could be achieved in the form of more detail training on the BEPS minimum standards for tax authorities of GDC partner countries that have joined the Inclusive Framework with the aim to enable them to evaluate the necessary specific legislative amendments and administrative measures to implement those standards in their specific situation.

– Assistance for GDC partner countries that have not joined the Inclusive Framework Decision phase

A first step should be to assist countries to identify which BEPS Action recommendations are most relevant for them taking into account the specific base erosion and profit shifting issues of each country's tax system (which may well also cover issues not dealt with by the BEPS package). For this, it is necessary to assess the tax policy, the legislative framework, and the tax administration capacity of each country.⁶⁷ More detailed training for the country's tax authorities on the specific elements of the BEPS package, considered most

⁶⁷ Some existing tools that may serve for assessment of the tax administration capacity for this purpose, supra n. 4.

relevant by them, is necessary to enable them to make informed decisions on those BEPS (and other possible) measures to be taken.

Planning phase

A subsequent step should be to assist countries in working out a realistic plan for implementing specific BEPS and other base erosion and profit shifting measures that have been identified and chosen, with clear objectives and concrete milestones. This plan should be part of the country's tax strategy and publicly available to inform and involve, besides the tax authorities, all other relevant stakeholders (e.g. parliament, business and advisory sectors). For this, political commitment and the involvement of the tax administration are essential. A realistic plan would be the result of joint work from all tax authorities, and should certainly also consider further capacity building assistance, including training and adequate resources, needed to do such implementation.

– Implementation phase for both groups of countries mentioned above

Implementation of the BEPS measures and/or other measures included in a country's plan will require sufficient capacity building assistance and support to enable the implementation of such plan consistently and systematically.

The type of assistance to be provided, including advice to and training of participants, should be in accordance with the implementation of the plan. Training should be highly systematic, aimed at progressively building the capacity of the tax authorities (e.g. a medium or long-term training plan for a specific group of tax administration officials, who could afterward train other relevant staff). Such assistance should be based on the specific country demands and properly coordinated.

4.1.3 Country demands, and effective coordination and transparency of various international assistance programmes

For the assistance and support regarding the awareness, identification and priority setting of measures, as well as, the implementation of the plan, countries can engage with development partners (e.g. IOs, other countries' governments and donors) on a demand-driven base for them to assist in realizing these.

Countries' requests based on countries' priorities and plans for their implementation may enable effective consultation and interaction among development partners to divide the projects among the various providers of assistance and to avoid duplication of such assistance.

The effective coordination and transparent work of development partners based on a country's implementation plan is necessary to achieve more effective capacity building. Furthermore, the sharing of information on country activities, as well as materials or tools between development partners, is also essential and mapping capacity building activities will help to allocate resources better. For example, a platform knowledge system to inform who is doing what, where and when. An example of such knowledge system is the International Aid Transparency Initiative (IATI), in which donors publicly disclose (individual project) information with regard to development expenditures (IATI is adopted by BMZ).⁶⁸

4.1.4 Effective monitoring of progress and evaluation of impact of assistance

The continuous monitoring of the realization of the plan's priorities, and evaluation of the impact of all types of assistance by all stakeholders involved, are essential to achieve an efficient realization of these plans (for instance even short-term training or conferences should fit in and be evaluated on the basis of a country's implementation plan).

4.2 Recommendations concerning specific issues of relevance for GDC partner countries

4.2.1 Whether or not GDC partner countries should join the Inclusive Framework

The Inclusive Framework is a very important forum to discuss the implementation of BEPS. Each developing country should be enabled to assess the relevance of joining the Inclusive Framework (including meeting the obligations related to it) in its own particular situation. Thus, we recommend to offer the necessary assistance and support to those developing countries, that express the need to receive such support, to identify and to in the future effectively address the, for them, most important issues regarding base erosion and profit shifting. This would enable those countries to take the decision whether joining the Inclusive Framework fits their priorities in combating base erosion and profits shifting.

4.2.2 Whether or not GDC partner countries should sign the MLI

The MLI can be an important tool to swiftly add anti-abuse provisions to the tax treaties concluded by a country. In order to be able to decide on whether or not to join the MLI, each country must carefully consider which treaties it would like to be covered and which

⁶⁸ For further information see <https://www.aidtransparency.net/wp-content/uploads/2009/06/iati-accra-statement-p1.pdf> and <https://iatiregistry.org/>

provisions it would want to choose, taking into account its particular tax treaty network and policy, and also the position of and its relation to its treaty partners. Thus, we recommend to offer the necessary assistance and support to developing countries requesting such support to enable them to make the decision to join the MLI and in making the various choices required.

4.2.3 Whether or not country-by-country reporting should be public

We would consider it advisable for developing countries to first acquire some experience with the use of confidential CbCR, as provided by BEPS Action 13 minimum standard. At a later stage, and based on the experience acquired, it could be considered in consultation with the countries providing the information, to in the future make such information public.

4.3 Recommendations on the survey study

The survey study, which main findings were presented in section 3, may be considered as a starting point for measuring the concrete status of BEPS package implementation and other measures in a country, i.e. progress in tax policy, legislative framework and tax administration capacity. A more detailed questionnaire may be a useful first step for implementing some of the above recommendations.

The survey may also be considered as a starting point for measuring the effectiveness of capacity building assistance. The present survey results, even if based on limited country answers, seem to provide an objective and useful impression about the situation in GDC partner countries. They provide a view about the impact of earlier assistance, if any, and what assistance may be required in the future. Country individual survey results provide a more accurate overview about the status in each partner country and then about where it may be necessary to continue working to achieve BEPS package implementation.

Regarding the actual survey, few countries completed the questionnaire. In order to obtain better survey results, i.e. more countries to complete the questionnaire and more clear and comprehensive answers per country, we recommend that this type of survey be conducted through physical interviews with high-level government officials of the tax authorities, i.e. tax policymakers, tax legislators and tax administrators. This could effectively and more easily be done in the sidelines of a relevant conference (e.g. ITC-ATI or PCT conference). In this case, a more detailed survey could also be used.

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Annex I – Questionnaire–based survey on BEPS implementation by GDC partner countries



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BEPS implementation is a challenge: completing this survey can help you.

Please take some time to complete this survey on the needs and challenges related to the implementation of the OECD/G20 BEPS Package.

The key purpose of this survey is to identify the specific needs, challenges and experiences of developing countries with regard to the implementation of the OECD/G20 BEPS Package. The survey has a focus on the BEPS Actions that are considered to be of most relevance for developing countries, i.e. Action 4, Action 6, Action 7, Actions 8–10, Action 13 and Action 15.

The questionnaire will take you through a series of steps that may be necessary for implementing the OECD/G20 BEPS Package. Even if your country is not currently interested in implementing the OECD/G20 BEPS Package, taking part in this survey may be beneficial. Filling it in will provide you with a useful insight into what an implementation of specific BEPS Actions would require and will give you an indication of what you may need to reach completion, should you wish to do so.

The questionnaire consists of 5 separate blocks, each containing a number of questions and sub-questions to be filled in:

- ▶ Block A: Country Strategy
- ▶ Block B: Legislative Framework of Selected BEPS Actions
- ▶ Block C: Organizational Structure
- ▶ Block D: Staff Expertise
- ▶ Block E: IT Infrastructure

Most of the questions are followed by either YES/NO or a standard answer. In these cases it suffices to choose one of the answers already provided as alternatives. If further comments or descriptions are requested, this will be clearly stated.

Throughout this survey, links to specific BEPS Actions Final Reports are made in order to facilitate completing it.

Filling in the questionnaire would take you 1 to 1.5 hours.

IBFD will be available to answer questions and provide clarifications and technical support by email or telephone at all times. Furthermore, in order to facilitate filling in the questionnaire and to provide you with an opportunity to discuss any questions or concerns, **we would much appreciate to have a conference call with you at your convenience, preferably 2 weeks after receipt of this survey.** We will soon contact you for this purpose.

Only IBFD and GIZ will assess your particular answers. Rest assured that this will be kept strictly confidential: the detailed country-specific information will only be available to IBFD and GIZ for information-gathering purposes. In the final report, the country-specific results will be treated anonymously.

All respondents participating in the survey will receive a copy of the final report. This report will provide useful insights into the needs and challenges of GIZ partner countries in relation to implementing the OECD/G20 BEPS Package and the governmental assistance initiatives undertaken by different international organizations.

On behalf of the IBFD project team, I would like to thank you in advance for your participation in this survey.

Best regards,

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Block A: Country Strategy

Strategic position and priority setting regarding the BEPS initiative and its implementation

A1. What are the main areas of focus and priorities in your tax strategy plan?

e.g. direct taxation or indirect taxation; corporate income tax or VAT; taxpayer registration; digitalization; etc.

[Click here to enter text.](#)

→ *Please proceed to A2*

A2. Is your tax strategy plan publicly available?

No

Yes. Please indicate how we can access the document: [Click here to enter text.](#)

→ *Please proceed to A3*

A3. Has your country recognized the need to implement, fully or partially, the OECD/G20 BEPS Package?

No → *please proceed to A4*

Yes → *please proceed to A5*

A4. Please indicate the main reason(s) for your country's current position not to implement the OECD BEPS package?

- Still to be discussed in government
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly explain the obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to A6

A5. In general, which of the following OECD/G20 BEPS Action Points does your country intend to implement? For each action planned for, please indicate whether there is a set timeframe to this effect, e.g. 2018, 2019. If no set timeframe, please leave it blank.

- Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments. Timeframe: [Click here to enter text.](#)
- Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances. Timeframe: [Click here to enter text.](#)
- Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status. Timeframe: [Click here to enter text.](#)
- Action 8–10: Aligning Transfer Pricing Outcomes with Value Creation. Timeframe: [Click here to enter text.](#)
- Action 13: Transfer Pricing Documentation and Country-by-Country Reporting. Timeframe: [Click here to enter text.](#)
- Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties. Timeframe: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to A6

A6. Has your country joined (or intends to join) the BEPS Inclusive Framework?

- No → *Please proceed to A7*
 - Yes. Please indicate the year your country joined the BEPS Inclusive Framework and the year of intended implementation of the Minimum Standards, *and thereafter proceed to B1*: [Click here to enter text.](#)
-

A7. Please indicate the main reason(s) for your country's current position not to join the BEPS Inclusive Framework:

- Still to be discussed in government
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority

- Considered relevant, but membership fees are too high
- Considered relevant, but too complex/costly to administer. Please briefly explain the obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to B1

Block B: Legislative Framework of selected BEPS Actions

BEPS Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

B1. Regarding BEPS Action 4 recommendations, does your country have, or is planning to introduce, domestic anti-abuse rules to limit, specifically, the deductibility of outbound interest payments?

- No → please proceed to B2
- Yes, has been introduced → please proceed to B3
- Yes, is planning to introduce → please proceed to B3

B2. Please indicate one of the following reasons for your country's current position not to introduce domestic anti-abuse rules to limit, specifically, the deductibility of outbound interest payments

- Still to be discussed in government
- Considered not relevant for country. Please explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to B4

B3. Please indicate whether the legislation (already introduced or planned) concerning domestic anti-abuse rules follows Action 4 recommendations – essentials of “best practices” as follows:

- It provides for a fixed ratio rule limiting an entity's deductions for net interest expense to a percentage of its EBITDA (for more information, please click [here](#))
- It provides for a group ratio rule allowing an entity to deduct net interest expense up to its multinational group's net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio (for more information, please click [here](#))
- It provides for targeted interest limitation rules to restrict interest deductions on payments made under specific transactions or arrangements (for more information, please click [here](#))
- It provides for specific interest limitation rules for banks and insurance companies (for more information, please click [here](#))

→ After you have selected one or more answers, please proceed to B4

BEPS Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

B4. Does your country have, or is planning to have, a treaty policy and/or a country model for tax treaty negotiations?

- No → *please proceed to B5*
- Yes → *please proceed to B6*

B5. Please indicate one of the following reasons why your country's current position is not to have a treaty policy and/or a country model for tax treaty negotiations?

- Still to be discussed in government
- Considered not relevant for country. Please explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to B7*

B6. What are, in general, the main policy considerations for negotiating tax treaties (e.g. increase foreign investment in the country, avoidance of double taxation, prevention of fiscal evasion and avoidance)?

[Click here to enter text.](#)

→ *Please proceed to B7*

B7. Is your country currently (re)negotiating, or is planning to (re)negotiate, tax treaties?

- No → *please proceed to B8*
- Yes → *please proceed to B9*

B8. Please indicate one of the following reasons why your country is not currently (re)negotiating, or is not planning to (re)negotiate, tax treaties?

- Still to be discussed in government
- Considered not relevant for country. Please explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to B10*

B9. What are the main reasons for entering into negotiations (e.g. requirement from other country, implementation of country treaty policy)?

Click here to enter text.

→ *Please proceed to B10*

B10. Regarding OECD/G20 BEPS Action 6 measures, has your country adopted (fully or partially), or has the intention to adopt, the Action 6 recommendations in its treaty policy?

- No → *please proceed to B11*
- Yes → *please proceed to B12*

B11. Please indicate one of the following reasons for your country's current position not to (fully or partially) adopt the Action 6 recommendations in its treaty policy?

- Still to be discussed in government
- Considered not relevant for country. Please explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to B14*

B12. Has your country adopted (fully or partially) the Action 6 recommendations in existing tax treaties?

- No
- Yes

→ *After you have selected an answer, please proceed to B13*

B13. Please indicate which of the following BEPS Action 6 measures would be adopted:

- Title and preamble: include in the title and preamble of tax treaties a clear statement that the States that enter into a tax treaty intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping. (for more information, please click [here](#))
- PPT rule: include in tax treaties the Principal Purpose Test rule (A PPT rule is a general anti-avoidance rule that addresses forms of treaty abuse, including treaty shopping. Under this rule, the benefits of a tax treaty should not be available where one of the principal purposes of arrangements or transactions is to secure a benefit under a tax treaty and obtaining that benefit in these circumstances would be contrary to the object and purpose of the relevant provisions of the tax treaty. For more information, please click [here](#)).

LOB rule: include in tax treaties a limitation on benefits rule supplemented by a specific provision that deals with conduit arrangements (A LOB is a specific anti-abuse rule found on tax treaties concluded by the United States and a few other countries. Such a specific rule addresses a large number of treaty shopping situations based on the legal nature, ownership in, and general activities of, residents of a contracting state. For more information, please click [here](#)).

→ After you have selected one or more answers, please proceed to B14

BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment (PE) Status

B14. In general, is the artificial avoidance of PE status a major concern for your country?

No → please briefly specify: [Click here to enter text.](#)

Yes

→ Please proceed to B15

B15. Concerning OECD/G20 BEPS Action 7, does your country have the intention to adopt (fully or partially) the Action 7 recommendations? (for more information, please click [here](#))

No → please proceed to B16

Yes → please proceed to B17

B16. Please indicate one of the following reasons for your country's current position not to (fully or partially) adopt the Action 7 recommendations?

Still to be discussed in government

Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to B18

B17. Please indicate which of the following anti-abuse rules under Action 7 would be adopted:

Amendments to the dependent agent test (including independent agent) to avoid the artificial avoidance of permanent establishment status through *Commissionnaire* arrangements and similar strategies (for more information, please click [here](#)).

Amendments to the specific activity exemptions to avoid artificial avoidance of permanent establishment status (for more information, please click [here](#)).

Specific rule to prevent fragmentation of activities between closely related parties (for more information, please click [here](#)).

Specific rule to prevent splitting up of contracts (for more information, please click [here](#)).

→ After you have selected one or more answers, please proceed to B18

BEPS Action 8–10: Aligning Transfer Pricing Outcomes with Value Creation (Intangibles; Risks and Capital; and Global Value Chains and other High-Risk Transactions)

B18. Has your country introduced (or is planning to introduce) any legislation providing for the recommendations provided by OECD/G20 BEPS Actions 8–10?

- No → please proceed to B19
- Yes, has been introduced → please proceed to B20
- Yes, is planning to introduce → please proceed to B20

B19. Please indicate one of the following reasons for your country's current position not to adopt (fully or partially) the Action 8–10 recommendations?

- Still to be discussed in government
- No domestic transfer pricing legislation in force
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to B20

BEPS Action 13: Transfer Pricing Country-by-Country Reporting

B20. Regarding OECD/G20 BEPS Action 13, has your country introduced (or is about to introduce) legislation or administrative procedures providing that a Country-by-Country Report is filed directly to the tax administration?

(A Country-by-Country Report requires aggregate tax jurisdiction-wide information relating to the global allocation of the MNE's income and taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. MNE groups with annual consolidated group revenue in the immediately preceding fiscal year exceeding EUR 750 million or a near equivalent amount in domestic currency must file this report. The legislation provides that the ultimate parent entity of the MNE group file the Country-by-Country Report in its jurisdiction of residence. For more information, please click [here](#)).

- No → please proceed to B21
- Yes, has been introduced → please proceed to B22
- Yes, is planning to introduce → please proceed to B22

B21. Please indicate one of the following reasons for your country's current position not to introduce legislation or administrative procedures providing that a Country-by-Country Report is filed directly to the tax administration?

- Still to be discussed in government
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to B25*

B22. Regarding the Country-by-Country Report, has your country introduced (or is planning to introduce) any legislation provided for the confidentiality and appropriate use of the reported information?

(Legislation providing for: the confidentiality of the reported information; that the tax administration may use the information for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting-related risks, and where appropriate for economic and statistical analysis; and that transfer pricing adjustments may not be based on the Country-by-Country Report. For more information, please click [here](#)).

- No → *please proceed to B23*
- Yes → *please proceed to B24*

B23. Please indicate one of the following reasons for your country's current position not to introduce legislation providing for the confidentiality and appropriate use of the reported information?

- Still to be discussed in government
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to B24*

B24. Please indicate which type of agreement your country has for the implementation of the automatic exchange of the Country-by-Country Reports based on international agreements?

- Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports
- Competent Authority Agreement on the exchange of Country-by-Country Reports on the basis of a Double Tax Convention
- Competent Authority Agreement on the exchange of Country-by-Country Reports on the basis of a Tax Information Exchange Agreement

→ *After you have selected an answer, please proceed to B25*

BEPS Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

B25. Has your country signed, or does your country intend to sign, the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting? (For more information, please click [here](#)).

- No → *please proceed to B26*
- Planning to sign → *please proceed to B27*
- Yes → *please proceed to C1*

B26. Please indicate one of the following reasons for your country's current position not to sign the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting?

- Still to be discussed in government
- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to C1*

B27. If your country intends to sign the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting, please specify the date the country is planning to sign (if available):

[Click here to enter text.](#)

→ *Please proceed to B28*

B28. If your country intends to sign the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting, please indicate the expected Reservations and Notifications (if available):

[Click here to enter text.](#)

→ *Please proceed to C1*

Block C: Organizational Structure

Organizational structure of the tax authority that would be necessary to implement the OECD/G20 BEPS Action Plan

C1. Regarding BEPS Action 6, is there a specialized unit dealing with tax treaties in your country's tax authority?

- No → Please proceed to C2
- Yes → *Please proceed to C4*

C2. Please indicate one of the following reasons for your country's current position not to have a specialized unit dealing with tax treaties in your country's tax authority?

- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but internal expertise yet to be developed
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to C3*

C3. Please indicate in which governmental department/office work the staff dealing with tax treaties, and whether there is one or more departments/offices (e.g. officials of the national international tax department of the tax authority; officials of each (territorial) office of the tax authority).

[Click here to enter text.](#)

→ *After you have provided your answer, please proceed to C6*

C4. How many people (approximately) are dealing with tax treaties in your country?

[Click here to enter text.](#)

→ *Please proceed to C5*

C5. What are the main challenges faced by the staff dealing with tax treaties in your country? Please briefly describe.

[Click here to enter text.](#)

→ *Please proceed to C6*

C6. Regarding BEPS Action 7, please indicate in which governmental department/office work the staff dealing with non-resident taxpayers, and whether there is one or more departments/offices (e.g. officials of the national international tax department of the tax authority; officials of each (territorial) office of the tax authority).

[Click here to enter text.](#)

→ *After you have provided your answer, please proceed to C7*

C7. How many people (approximately) are dealing with non-resident taxpayers in your country?

[Click here to enter text.](#)

→ *Please proceed to C8*

C8. What are the main challenges faced by the staff dealing with non-resident taxpayers in your country? Please briefly describe.

[Click here to enter text.](#)

→ *Please proceed to C9*

C9. Regarding BEPS Actions 8–10, is there a transfer pricing unit in your country's tax authority?

No → *Please proceed to C10*

Yes → *Please proceed to C12*

C10. Please indicate one of the following reasons why your country does not have a transfer pricing unit in your country's tax authority?

Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)

Considered relevant, but not a priority

Considered relevant, but internal expertise yet to be developed

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ *After you have selected an answer, please proceed to C11*

C11. Please indicate in which governmental department/office work the staff dealing with transfer pricing, and whether there is one or more departments/offices (e.g. officials of the national international tax department of the tax authority; officials of each (territorial) office of the tax authority).

[Click here to enter text.](#)

→ *After you have provided your answer, please proceed to C12.*

C12. How many people (approximately) are dealing with transfer pricing in your country?

[Click here to enter text.](#)

→ *Please proceed to C13*

C13. What are the main challenges faced by the staff dealing with transfer pricing in your country? Please briefly describe.

[Click here to enter text.](#)

→ Please proceed to C14

C14. Regarding BEPS Actions 13, is there an exchange of information unit in your country's tax authority?

- No → Please proceed to C15
- Yes → Please proceed to C17

C15. Please indicate one of the following reasons why your country does not have an exchange of information unit in your country's tax authority?

- Considered not relevant for country. Please briefly explain: [Click here to enter text.](#)
- Considered relevant, but not a priority
- Considered relevant, but internal expertise yet to be developed
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have selected an answer, please proceed to C16.

C16. Please indicate in which governmental department/office work the staff dealing with exchange of information, and whether there is one or more departments/offices (e.g. officials of the national international tax department of the tax authority; officials of each (territorial) office of the tax authority).

[Click here to enter text.](#)

→ After you have provided your answer, please proceed to C17.

C17. How many people (approximately) are dealing with the exchange of information in your country?
[Click here to enter text.](#)

→ Please proceed to C18

C18. What are the main challenges faced by the staff dealing with the exchange of information in your country? Please briefly describe.

[Click here to enter text.](#)

→ Please proceed to D1

Block D: Staff expertise

Knowledge and skills within the tax authority that would be necessary to implement the OECD/G20 BEPS Action Plan

D1. Regarding **BEPS Action 6**, please generally indicate the level experience that staff working on tax treaties matters have with tax treaties? (e.g. advanced, intermediate, etc.)

Advanced Basic

→ *Please proceed to D2*

D2. Please indicate whether staff working on tax treaty negotiation have received specific training on tax treaty negotiation?

No → *Please proceed to D3*

Yes → *Please proceed to D4*

D3. Please indicate one of the following reasons why staff working on tax treaty negotiation have not received specific training on tax treaty negotiation?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to D4*

D4. Please indicate whether staff working on tax treaty interpretation and application have received specific training on tax treaty interpretation and application?

No → *Please proceed to D5*

Yes → *Please proceed to D6*

D5. Please indicate one of the following reasons why staff working on tax treaty interpretation and application have not received specific training on tax treaty interpretation and application?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to D6*

D6. Please indicate whether staff working on tax treaty matters have received specific training on OECD/G20 BEPS-related recommendations?

- No → *Please proceed to D7*
- Yes → *Please proceed to D8*

D7. Please indicate one of the following reasons why staff working on tax treaty matters have not received specific training on OECD/G20 BEPS-related recommendations?

- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to D9*

D8. If the staff have received specific training on OECD/G20 BEPS-related recommendations related to tax treaty matters, please briefly describe the main aspects of this training (e.g. who provided it, what type of training it was and what its duration was).

[Click here to enter text.](#)

→ *Please proceed to D9*

D9. Regarding **BEPS Action 7**, please generally indicate the level experience that staff working on taxation of non-residents have with taxation of non-residents? (e.g. advanced, intermediate, etc.)

Advanced Basic

→ *Please proceed to*

D10

D10. Please indicate whether staff working on taxation of non-residents have received training on taxation of non-residents?

- No → *Please proceed to D11*
- Yes → *Please proceed to D12*

D11. Please indicate one of the following reasons why staff working on taxation of non-residents have not received specific training on taxation of non-residents?

- Considered relevant, but not a priority
- Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)
- Other; please specify: [Click here to enter text.](#)

→ After you have provided your answer, please proceed to D12

D12. Regarding BEPS Action 8–10, please generally indicate the level experience that staff working on transfer pricing have with transfer pricing? (e.g. advanced, intermediate, etc.)

Advanced Basic

→ Please proceed to D13

D13. Please indicate whether staff working on transfer pricing have received training on transfer pricing?

No → Please proceed to D14

Yes → Please proceed to D15

D14. Please indicate one of the following reasons why staff working on transfer pricing have not received specific training on transfer pricing?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ After you have provided your answer, please proceed to D15

D15. Please indicate whether staff working on transfer pricing have received specific training on OECD/G20 BEPS–related recommendations?

No → Please proceed to D16

Yes → Please proceed to D17

D16. Please indicate one of the following reasons why staff working on transfer pricing have not received specific training on OECD/G20 BEPS–related recommendations?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ After you have provided your answer, please proceed to D18

D17. If the staff have received specific training on OECD/G20 BEPS-related recommendations related to transfer pricing, please briefly describe the main aspects of this training (e.g. who provided it, what type of training it was and what its duration was).

[Click here to enter text.](#)

→ *Please proceed to D18*

D18. Regarding **BEPS Action 13**, please generally indicate the level experience that staff working on exchange of information have with exchange of information? (e.g. advanced, intermediate, etc.)

Advanced Basic

→ *Please proceed to*

D19

D19. Please indicate whether staff working on transfer pricing have received training on exchange of information have with exchange of information?

No → *Please proceed to D20*

Yes → *Please proceed to D21*

D20. Please indicate one of the following **reasons** why staff working on exchange of information have not received specific training on exchange of information?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to D21*

D21. Please indicate whether staff working on exchange of information have received specific training on OECD/G20 BEPS Country-by-Country Reporting?

No → *Please proceed to D22*

Yes → *Please proceed to D23*

D22. Please indicate one of the following reasons why staff working on exchange of information have not received specific training on OECD/G20 BEPS Country-by-Country Reporting?

Considered relevant, but not a priority

Considered relevant, but too complex/costly to administer. Please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

Other; please specify: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to E1.*

D23. If the staff have received specific training on OECD/G20 BEPS Country-by-Country Reporting, please briefly describe the main aspects of this training (e.g. who provided it, what type of training it was and what its duration was).

[Click here to enter text.](#)

.

→ *Please proceed to E1*

Block E: IT Infrastructure

IT infrastructure that would be necessary to implement transfer pricing legislation and the BEPS Action 13 – Country-by-Country Reporting (including the analysis of received information)

E1. Does your country's tax authority have an IT infrastructure and skilled staff available to collect, store and analyse data relating to transfer pricing?

No → *Please proceed to E2*

Yes → *Please proceed to E3*

E2. Please indicate one of the following reasons why your country's tax authority does not have an IT infrastructure and skilled staff available to collect, store and analyse data relating to transfer pricing?

Lack of necessary hardware (including stable electricity supply)

Lack of necessary software

Lack of IT staff expertise

Other; please describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to E3*

E3. Does your country's tax authority have an IT infrastructure and skilled staff available to analyse and use data relating to transfer pricing information received from another country?

No → *Please proceed to E4*

Yes → *Please proceed to E5*

E4. Please indicate one of the following reasons why your country's tax authority does not have an IT infrastructure and skilled staff available to analyse and use data relating to transfer pricing information received from another country?

- Lack of necessary hardware (including stable electricity supply)
- Lack of necessary software
- Lack of IT staff expertise
- Other; please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to E5*

E5. Concerning the Country-by-Country Reporting, does your country's tax authority have an IT infrastructure and skilled staff available to guarantee taxpayer data protection?

(The information security management systems used by each jurisdiction's tax administration must adhere to standards that ensure the protection of confidential taxpayer data. For example, there must be a screening process for employees handling the information, limits on who can access the information, and systems to detect and trace unauthorized disclosures. The internationally accepted standards for information security are known as the "ISO/IEC 27000-series". The tax administration should be able to document that it is compliant with the ISO/IEC 27000-series standards or that it has an equivalent information security framework and that taxpayer information obtained under an exchange agreement is protected under that framework. For more information, please click [here](#))

- No → *Please proceed to E6*
- Yes → *Please proceed to E7*

E6. Please indicate one of the following reasons why your country's tax authority does not have an IT infrastructure and skilled staff available to guarantee taxpayer data protection?

- Lack of necessary hardware (including stable electricity supply)
- Lack of necessary software
- Lack of IT staff expertise
- Other; please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to E7*

E7. Concerning the Country-by-Country Reporting, does your country's tax authority have an IT infrastructure and skilled staff available to work with the OECD XML Schema? (For more information, please click [here](#))

(In order to facilitate the swift and uniform implementation of Country-by-Country Reporting and with a view to accommodating the electronic preparation, filing and exchange of Country-by-Country Reports, a Country-by-Country XML Schema was developed by the OECD. A schema is a data structure for electronically holding and transmitting information. Extensible markup language (XML) is commonly used for this purpose. Examples are the OECD's Common Reporting Standard XML Schema, the United States' FATCA XML Schema and the European Union's Fisc 153 format. The Country-by-Country Reporting XML Schema is designed to be used for the automatic exchange of Country-by-

Country Reporting Reports between Competent Authorities. In addition, the Country-by-Country Reporting XML Schema may also be used for domestic reporting by Reporting Entities to their domestic tax authorities)

- No → *Please proceed to E8*
- Yes → *Please proceed to E9*

E8. Please indicate one of the following reasons why your country's tax authority does not have an IT infrastructure and skilled staff available to work with the OECD XML Schema?

- Lack of necessary hardware (including stable electricity supply)
- Lack of necessary software
- Lack of IT staff expertise
- Other; please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

→ *After you have provided your answer, please proceed to E10*

E9. If your country's tax authority does have an IT infrastructure and skilled staff available to work with the OECD XML Schema, please briefly specify to what extent this has been implemented:

[Click here to enter text.](#)

→ *Please proceed to E10*

E10. Concerning the Country-by-Country Reporting, does your country's tax authority have an IT infrastructure and skilled staff available to ensure that an appropriate encryption method and method for electronic data transmission are in place?

- No → *Please proceed to E11*
- Yes → *Please proceed to E12*

E11. Please indicate one of the following reasons why your country's tax authority does not have an IT infrastructure and skilled staff available to ensure that an appropriate encryption method and method for electronic data transmission are in place?

- Lack of necessary hardware (including stable electricity supply)
- Lack of necessary software
- Lack of IT staff expertise
- Other; please briefly describe the main obstacles you face and the assistance you may need to overcome such obstacles: [Click here to enter text.](#)

→ *After you have provided your answer, you have finished the survey.*

E12. If your country's tax authority does have an IT infrastructure and skilled staff available to ensure that an appropriate encryption method and method for electronic data transmission are in place, please briefly specify to what extent this has been implemented:

Click here to enter text.

→ After you have provided your answer, you have finished the survey.

Additional Information

We will now ask you some information in order to finish this questionnaire.

What is your country?

Click here to enter text.

Who contributed to fill-in this questionnaire?

Person 1

Click here to enter text.

Department:

Click here to enter text.

Function person 1

Click here to enter text.

Last Name (optional):

Click here to enter text.

Person 2

Click here to enter text.

Department:

Click here to enter text.

Function person 2

Click here to enter text.

Last Name (optional):

Click here to enter text.

Person 3

Click here to enter text.

Department:

Click here to enter text.

Function person 3

Click here to enter text.

Last Name (optional):

Click here to enter text.

Person 4

Click here to enter text.

Department:

Click here to enter text.

Function person 4

Click here to enter text.

Last Name (optional):

Click here to enter text.

Thank you for taking the time to fill out our survey. We rely on your feedback to help us understand how we can support BEPS implementation in developing countries. Your input is greatly appreciated.

Annex II – Answers from surveyed GDC partner countries to the questionnaire-based survey

This Annex provides information about the survey and the survey process, and then presents the answers given by the survey countries on the various questions, per survey block, objectively and summarized. Country-specific answers are treated anonymously.

1. Survey

Survey concept

The main goal in designing the questionnaire was to be able to assess the current state of affairs in GDC partner countries concerning the implementation of selected BEPS Actions and their specific experiences, challenges and needs.

The survey was divided into different areas that may be considered as customary steps that would be necessary for the development of a specific aspect of a country's tax system, including the implementation of BEPS recommendations (e.g. strategy setting, legislation and administrative implementation). Considering these areas, the aim was for senior tax policy makers, tax legislators and tax administrators to answer the survey; however, except for one country, only senior tax official(s) from the tax administration answered the questionnaires. Accordingly, survey results refer to the tax administration as those results provide a better overview from the tax administration's point of view.

In consultation with GIZ, it was considered that, in order to optimize the chances of countries being prepared to answer the survey, the time required to answer the entire questionnaire should be limited to approximately 1 to 1.5 hours. Based on this time constraint, the original survey, which was designed to be answered in about 2.5 hours, was shortened by excluding questions concerning BEPS Actions 5, 11 and 14, and certain aspects of BEPS Actions 6 and 8–10.

Countries that have joined the Inclusive Framework must implement the minimum standards; therefore, this Annex identifies the answers from these countries concerning the minimum standards covered by the questionnaire (i.e. BEPS Actions 6 and 13). In addition, it also identifies the answers from these countries concerning other BEPS Actions, as their answers provide interesting information about the implementation progress status in this group of countries compared with those countries that have not joined the Inclusive Framework.

Some questions required answers through standard options, e.g. choosing either “yes” or “no”, or choosing between limited options such as “Still to be discussed in government”, “Considered not relevant for country”, “Considered relevant, but not a priority”, “Considered relevant, but too complex/costly to administer”. Other questions required a text-based answer for further clarification. Throughout the survey, links to specific sections of the BEPS Package Final Reports were made in order to provide necessary information to the participating countries for facilitating answering.

The questionnaire was prepared in three different languages (English, Spanish and French) to adequately cover the languages used in the target countries.

Survey process

IBFD sent the questionnaire by email to nine countries on 28 July 2017.⁶⁹ GIZ sent the questionnaire by email to the other nine countries on 3 August 2017. This division of the countries was based on personal contact made by IBFD with senior tax officials from some of these countries during the ITC/ATI conference held from 14–16 June 2017 in Berlin. During these meetings, they committed their support to answering the questionnaire; accordingly, IBFD sent the survey directly to these persons. The other nine countries were contacted by GIZ through its GIZ staff appointed in each country. Initially, countries were invited to answer the questionnaire within one month; however, this deadline was later extended to 30 September 2017 in order to obtain more replies. Besides the initial email communication, countries were reminded through follow-up emails.

In order to facilitate completion of the questionnaire and to provide countries with the opportunity to discuss any questions or concerns, IBFD conducted, where possible, conference calls (interviews) with country representatives. IBFD was also available to answer questions, provide clarification and offer technical support by email or telephone during the entire period.

In order to obtain frank answers to the questionnaire, the surveyed countries were assured that the results of the survey would be presented anonymously. In this Annex country names are therefore not mentioned.

Surveyed countries

⁶⁹ Benin, Burkina Faso, Cameroon, Egypt, Gambia, Ghana, Honduras, Liberia and Uganda.

Seven out of nineteen countries completed the survey. Six of these countries are those whose representatives were personally contacted initially during the ITC/ATI conference (see above).

The following countries completed the survey: Burkina Faso; Cameroon; DR Congo; Gambia; Honduras; Liberia; and Uganda. Four of these countries have joined the Inclusive Framework: Burkina Faso, Cameroon, DR Congo and Liberia. *See Section 3.2.* for further information on these countries.

2. Answers to block A: Country tax strategy

The survey questions of this block deal with the three main issues below, followed by a discussion of each:

- whether the country has a tax strategy plan publicly available and, if so, what its main areas of focus are;
- whether a country has recognized the need to implement, fully or partially, the OECD/G20 BEPS package and, if so, regarding which selected BEPS actions and within what time frame; and
- whether a country joined or intends to join the BEPS Inclusive Framework and, if not, what the main reasons are.

Whether the country has a tax strategy plan publicly available and, if so, what its main areas of focus are

The seven countries stated that they have a tax strategy plan, but only four of them have made this plan publicly available.

Two out of the seven countries explicitly mentioned international tax issues as the main areas of focus of their strategy plan. Only one of these two countries has joined the Inclusive Framework. This country stated expressly that it intends to comply with the requirements of the Inclusive Framework and the exchange of information (EOI). The other country pointed out certain general areas of international taxation: withholding taxes on non-residents, audits on international taxation, transfer pricing and PE. It is worth mentioning that these two countries also indicated as areas of focus a fundamental tax system issue: issues relating to the registration of taxpayers.

Concerning other main focus areas of these countries, three of the seven countries mentioned digitalization or IT issues relating to tax procedures. Two countries pointed out the taxation of the extractive sector. Four countries mentioned indirect taxation or VAT issues. One country mentioned specifically the rationalization of exemptions. Finally, one country referred to more general tax administration matters, such as compliance

optimization, the availability of modern infrastructure and competent human resources, and effective regional and local partnerships.

Whether a country has recognized the need to implement, fully or partially, the OECD/G20 BEPS package and, if so, which selected BEPS actions and within what time frame

Six countries recognized the need to implement the OECD/G20 BEPS package. The only country that has not recognized this need, expressed that there is no official position from the Ministry of Finance yet.

Regarding which of the specific Actions these seven countries intend to implement:

- Action 4: four (all four Inclusive Framework) countries;
- Action 6: three (including two Inclusive Framework) countries;
- Action 7: three (including two Inclusive Framework) countries;
- Actions 8–10: four (including two Inclusive Framework) countries;
- Action 13: four (including two Inclusive Framework) countries; and
- Action 15: one (Inclusive Framework) country.

Two out of the other six countries stated a time frame (of a year) for the implementation of specific BEPS Actions (2018 or 2019). Both countries have joined the Inclusive Framework.

Whether a country has joined or intends to join the OECD Inclusive Framework and, if not, what the main reasons for this decision are

Four countries have joined the OECD Inclusive Framework. Two of the other three countries expressed that this has not been discussed in government yet, and the other country expressed that this is relevant but not a priority.

In the survey, the government official of one country responded that his country has not joined, nor intends to join, the Inclusive Framework. However, this country has actually joined the Inclusive Framework.

3. Answers to block B: Legislative Framework of Selected BEPS Actions

Questions of this block deal with specific issues concerning legislative implementation and/or, where relevant, policy setting for the implementation of certain aspects of the selected BEPS Actions.

BEPS Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Payments)

Action 4 survey questions relate to whether the country has introduced, or is planning to introduce, domestic anti-abuse rules to limit the deductibility of outbound interest payments.

Out of the seven countries, one country has already introduced such rules, five countries are planning to introduce them and one country reports that this has not been discussed in government yet. One country left this part of the survey blank.

Concerning Action 4 recommendations (“Best Practices”), the countries were asked to indicate which of the following four alternatives have been or would be followed:

- legislation provides for a fixed ratio rule limiting an entity’s deductions for net interest expense to a percentage of its EBITDA;
- legislation provides for a group ratio rule allowing an entity to deduct net interest expense up to its multinational group’s net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio;
- legislation provides for targeted interest limitation rules to restrict interest deductions on payments made under specific transactions or arrangements; or
- legislation provides for specific interest limitation rules for banks and insurance companies.

Out of the five countries that are planning to introduce these rules, two countries would introduce rules that follow the first alternative. One country would follow the second alternative and another country considers introducing rules that follow all four alternatives. One country has not specified which rules it is planning to introduce. The country that has already introduced these rules followed alternative number three.

BEPS Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances)

BEPS Action 6 survey questions relate to:

- whether the country has established, or is planning to establish, a treaty policy and/or a country model for tax treaty negotiations and what the main policy considerations are for negotiating or renegotiating tax treaties; and
- whether the country has adopted, or intends to adopt, the Action 6 recommendations in its treaty policy and, if this is the case, which of the minimum standard provisions are or would be adopted.

Whether the country has, or is planning to have, a treaty policy and/or a country model for tax treaty negotiations and what the main policy considerations are for negotiating or renegotiating tax treaties

Five out of seven countries have established, or are planning to establish, a treaty policy and/or a country model for tax treaty negotiations. These five countries mentioned the following policy considerations:

- avoiding double taxation (two countries);
- tackling fraud and international tax evasion (two countries);
- promoting foreign investment (four countries); and
- the promotion of administrative assistance and international exchange of tax information (one country).

Regarding the other two countries that do not have a treaty policy, one expressed that this matter still has to be discussed in government and the other country that it is considered relevant, but not a priority. This country has, however, joined the Inclusive Framework.

Six out of seven countries are either currently (re)negotiating or planning to (re)negotiate tax treaties. Three countries mentioned that the main reason for entering into negotiation is requests from other jurisdictions. One country specifically mentioned requests from tax haven jurisdictions.

The only country out of the seven that is not currently (re)negotiating or planning to (re)negotiate tax treaties mentioned that this is considered relevant, but not a priority. This country has, however, joined the Inclusive Framework.

Whether the country has adopted, or has the intention to adopt, the Action 6 recommendations in its treaty policy and, if this is the case, which of the minimum standard provisions have or would be adopted

Three out of seven countries have already adopted or have the intention to adopt (fully or partially), the Action 6 recommendations in their treaty policy. Two of these countries have joined the Inclusive Framework. One of the three countries would adopt the title and preamble, the principal purpose test (PPT) rule and the limitation on benefits (LOB) rule. Another country would adopt only the PPT and the LOB rule. One country has not specified which rules it is planning to introduce.

Two out of the seven countries stated that they have already adopted Action 6 recommendations in existing tax treaties. One of these countries has joined the Inclusive Framework.

Out of the four remaining countries, which have not adopted or do not intend to adopt (fully or partially) the Action 6 recommendations, two countries (one of which has joined the Inclusive Framework) have not discussed this in government yet. Another country, which has

also joined the Inclusive Framework, considers the Action 6 recommendations relevant, but not a priority (this country has two tax treaties in force and it is negotiating two treaties). One country does not have any tax treaties.

BEPS Action 7 (Preventing the Artificial Avoidance of Permanent Establishment (PE) Status)

Action 7 survey questions relate to whether the artificial avoidance of PE status is a major concern for the country and whether the country already has introduced, or is planning to introduce, Action 7 recommendations to prevent the artificial avoidance of PE status.

Five out of seven countries consider artificial avoidance of PE status to be a major concern for their country. In regard to the other two countries, one stated that there is no evidence of artificial avoidance of PE status yet, and the other mentioned that it does not have any tax treaties.⁷⁰

Three out of the seven countries intend to, fully or partially, introduce the following Action 7 recommendations:

- amendments to the dependent agent test (including independent agent) to prevent the artificial avoidance of PE status through *commissionnaire* arrangements and similar strategies;
- amendments to specific activity exemptions to prevent the artificial avoidance of PE status;
- a specific rule to prevent the fragmentation of activities between closely related parties; and
- a specific rule to prevent the splitting up of contracts.

Two out of these three countries expressed the intention to introduce all of the above-mentioned measures. The third country intends to introduce only the first and fourth measures.

Out of the three countries that do not intend to introduce the Action 7 recommendations, one country stated that it still has to be discussed in government, another mentioned that it is under discussion with the Ministry of Finance and the third stated that the Action 7 recommendations are relevant, but not a priority. One country has not responded to the part about introducing the Action 7 recommendations.

⁷⁰ Since Action 7 recommendations are directly linked to PE definitions in tax treaties, this question is currently not relevant for the country. However, this country clarified that Action 7 may lead to amendments to its domestic law instead.

BEPS Action 8–10 (Aligning Transfer Pricing Outcomes with Value Creation)

Action 8–10 survey questions relate to whether the country has introduced, or is planning to introduce, legislation providing for the recommendations of OECD/G20 BEPS Actions 8–10.

Five out of seven countries have introduced, or are planning to introduce, such legislation. One of the remaining countries stated that the reason for not introducing such legislation is that it has not been discussed in government yet. The other country mentions that Actions 8–10 are relevant, but not a priority.

BEPS Action 13 (Country-by-Country Reporting)

Action 13 survey questions relate to whether the country has introduced, or is planning to introduce:

- legislation or administrative procedures providing for a Country-by-Country Report to be filed directly to the tax administration; and
- legislation providing for the confidentiality and appropriate use of the reported information.

Legislation or administrative procedures providing for a Country-by-Country Report to be filed directly to the tax administration

All except for two of the seven countries have already introduced, or are about to introduce, legislation or administrative procedures providing for a Country-by-Country Report to be filed directly to the tax administration. Three of these countries have joined the Inclusive Framework.

Two countries are not planning to introduce this legislation. In one country, it is has not yet been discussed in government. In the other country, which has joined the Inclusive Framework, it is considered relevant, but not a priority.

Legislation provided for the confidentiality and appropriate use of the reported information

Four out of the seven countries have already introduced, or are about to introduce, legislation providing for the confidentiality and appropriate use of the reported information. Three of these countries have joined the Inclusive Framework.

One of the two countries that do not have intention to introduce this confidentiality legislation stated that it has not been discussed in government yet, the other mentions that

it is relevant, but too complex/costly to administer. One country, which has joined the Inclusive Framework, has not responded to this question.

Out of the seven countries, one mentioned that it already has a Competent Authority Agreement on the exchange of Country-by-Country Reports based on a Tax Information Exchange Agreement. Another country stated that it has already signed the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports. Both of these countries have joined the Inclusive Framework. The remaining countries have not replied to this question.

BEPS Action 15 (Developing a Multilateral Instrument to Modify Bilateral Tax Treaties)

Action 15 survey questions relate to whether the country already has signed, or is planning to sign, the Multilateral Convention (MLI) to implement tax treaty-related measures to prevent base erosion and profit shifting.

Two countries out of the seven indicated that they have already signed the MLI. Another country stated its intention to sign it in 2019 (however, this country signed the MLI already according to the OECD information). These three countries are all countries that have joined the Inclusive Framework.

Out of the remaining four, three countries stated that it is still to be discussed in government. The other country stated that the MLI is not a priority (this country does not have any tax treaties).

4. Answers to block C: Organizational Structure

Questions of this block deal with the following three main issues:

- whether the countries have a specialized unit in their tax administrations dealing with the specific topics related to the selected BEPS Actions;
- the number of tax officials dealing with the specific topics related to the selected BEPS Actions (whether they are under a specialized unit or not); and
- the main challenges faced by the staff dealing with the specific topics related to the selected BEPS Actions.

Whether there is a specialized unit dealing with tax treaties in the country's tax administration and, if not, what the reasons are; and the number of officials dealing with tax treaty matters and their main challenges

Four countries have a specialized unit dealing with tax treaties in their country's tax authority; three of these countries have joined the Inclusive Framework. Two of the remaining three countries, which do not have such a specialized unit, indicated as the main reason that it is not a priority, since one of the countries do not have tax treaties in force and the other one, which has joined the Inclusive Framework, only has one tax treaty in force and no treaty policy.

Two countries, which have joined the Inclusive Framework, have ten or more tax officials dealing with tax treaties and four countries have less than ten tax officials working with tax treaties (these tax officials are not necessarily under a specialized unit). One country did not reply to this question. Out of the four countries that have a specialized unit, only one stated that it has ten or more tax officials working on tax treaties (this country has joined the Inclusive Framework).

Concerning their main challenges, five countries, two of which have joined the Inclusive Framework, indicated a lack of specialized staff with a general understanding of tax treaties and current issues involving tax treaties. Three countries, which have joined the Inclusive Framework, indicated a lack of capacity to negotiate tax treaties. Two countries also pointed out the difficulty of obtaining information on foreign income. One country indicated its outdated treaty network. One country, which has joined the Inclusive Framework, pointed out a lack of permanent training and financial resources to participate in international meetings. Finally, only one country, which has also joined the Inclusive Framework, referred specifically to BEPS Action 6 issues, indicating that one of the challenges is a lack of understanding of treaty shopping (mainly its causes and effects).

Which is the unit dealing with non-residents in the country's tax administration; and the number of officials dealing with non-resident matters and their main challenges

One country has a specialized international audit and transfer pricing department, which deals with non-residents. Four countries indicated that non-resident issues are dealt with by the large taxpayer unit or the medium and small taxpayer unit (the attribution depends on the size of the taxpayer and not its residence). In the other two countries, all tax inspectors deal with resident and non-resident matters.

Four countries have more than twenty officials in the units that deal with non-residents (non-specialized units). The two remaining countries have less than twenty officials in these units. One country did not reply to this question.

Three countries, two of which are countries that have joined the Inclusive Framework, indicated that one of their main challenges when dealing with non-residents is the difficulty

in identifying non-resident taxpayers. Difficulty in obtaining information about transactions carried out by non-resident taxpayers is a challenge faced by three countries, one of which has joined the Inclusive Framework. Additionally, two countries, one of which has joined the Inclusive Framework, recognized that knowledge gaps in relation to complex tax schemes (for example, indirect sale of assets) are a main challenge for their staff. One country mentioned capacity issues, since the staff handle a large number of both domestic and international cases, depending on the size of the taxpayer. Finally, a country indicated that the attribution of profits to PEs is a challenge.

Whether there is a specialized unit dealing with transfer pricing in the country's tax administration and, if not, what the reasons are; and the number of officials dealing with transfer pricing and their main challenges

Three countries have a specialized unit dealing with transfer pricing in their country's tax authority. One of these three countries has joined the Inclusive Framework. In one case, the specialized transfer pricing unit was created recently.

One of the four countries that do not have such a specialized unit indicated as the main reason that it is not a priority due to the economic characteristics of the country and that, even in cases of transfer pricing abuse from taxpayers, a specialized unit would be too complex or costly to administer. Another country, which has joined the Inclusive Framework, specified that it is a country priority, but it would be too complex or costly to administer. The other country, which has also joined the Inclusive Framework, indicated that the staff part of the large taxpayer unit will deal with transfer pricing and that they are being trained.

Two of the countries that have a specialized transfer pricing unit have twenty or more tax officials in this unit. The third country has a transfer pricing unit with less than twenty officials. Out of the four countries that do not have a specialized unit, two have more than twenty officials dealing with transfer pricing and one country has less than twenty officials dealing with transfer pricing. One country did not reply to this question.

One of the main challenges for two countries, one of which has joined the Inclusive Framework, is the lack of knowledge on transfer pricing matters. These countries indicated that the “[lack of] general TP unawareness” and “[lack of] understanding of the Arm's Length Principle and its application to a particular transaction” were the main challenges in dealing with transfer pricing. Two countries, which have joined the Inclusive Framework, included having an insufficient transfer pricing legal framework as a main challenge. Two countries, which have joined the Inclusive Framework, indicated that a lack of access to external comparables databases is a challenge faced by their staff. Two countries, one of which has joined the Inclusive Framework, mentioned difficulties in obtaining documentation on

international operations by non-residents. Another two countries, one of which has joined the Inclusive Framework, included as a challenge a lack of a risk assessment matrix for audit selection. One country, which has joined the Inclusive Framework, mentioned inexperience in the negotiation of advance pricing agreements as a challenge. Finally, one country, which has also joined the Inclusive Framework, specified that a lack of knowledge by their staff in the use of administrative assistance and requesting of information present a challenge.

Whether there is a specialized unit dealing with exchange of information in the country's tax administration and, if not, what the reasons are; and the number of officials dealing with exchange of information and their main challenges

Six countries have a specialized unit dealing with exchange of information in the country's tax administration. The country that does not have such a unit explained that it is not a priority due to the general characteristics of the country's current economy (a small economy with low MNE presence). Out of the five countries with a specialized exchange of information unit, one country has more than ten officials working in this unit and the other four countries less than ten officials. The country that does not have a specialized unit only has one tax official dealing with exchange of information matters.

The main challenges faced by three countries, two of which have joined the Inclusive Framework, is the lack of technological tools to exchange and store information. One country pointed out as a challenge the lack of technological tools and legal framework to guarantee the confidentiality of information received from foreign authorities. Two countries, which have joined the Inclusive Framework, indicated the lack of knowledge and ability to request and exchange information. One country highlighted that having a legal framework that does not support access to information (e.g. real-time information concerning beneficiaries of instruments such as bearer securities) is a challenge faced by its tax administration.

5. Answers to block D: Staff Expertise

The survey questions of this block deal with the level of experience of staff working on specific international taxation matters and the training received by staff on those matters.

Relating to BEPS Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances):

Level of tax treaty experience of staff working on tax treaty matters

On a scale from level 7 (most advanced) to level 1 (beginner):

- two countries indicated that staff have level 2;
- one country indicated level 3;
- one country, which has joined the Inclusive Framework, indicated level 4; and
- two countries, one of which has joined the Inclusive Framework, indicated level 5.

One country did not answer this question.

One of the two countries that indicated level 2 has a handful of old tax treaties in force, but it is negotiating two treaties and it has initialled or ratified four treaties. The other country does not have treaties in force, but it is negotiating a treaty.⁷¹

Whether staff working on tax treaty negotiation and/or interpretation and application have received specific training in these matters, and reasons if this is not the case

Staff from only two countries have received this specific type of training. One of them is a country that does not have tax treaties in force, but is negotiating one treaty. Staff from the countries that have joined the Inclusive Framework have not received this type of training.

The other five countries whose staff have not received training, expressed as reasons for the lack of training that staff do not deal with tax treaties very often (one country), that staff have only recently been appointed (one Inclusive Framework country) and that the subject is relevant, but too complex/costly to administer (two Inclusive Framework countries). Two countries that have joined the Inclusive Framework expressed specifically a lack of technical and financial resources.

Whether staff working on tax treaty matters have received specific training on OECD/G20 BEPS-related recommendations, and reasons if this is not the case; and if staff have received training, what the main aspects of this training were

Three countries have received specific training on OECD/G20 BEPS-related recommendations. Staff from one of these countries have attended five short-term trainings (one week) organized by different organizations (ATAF and IBFD funded by the Dutch Government and Global Forum). Staff from another country have attended only one of these trainings. Staff from the last country are attending a training organized by CIAT-SETCO and provided by a tax official of another tax administration; this training has a rather long-term duration (2017–2018).

The four countries that have joined the Inclusive Framework have not had this specific training. These countries expressed as reasons for the lack of training: that the training was

⁷¹ Based on information from the IBFD Tax Research Platform, Treaties database, accessed on 29 September 2017.

requested from the OECD, but has not been delivered yet (one Inclusive Framework country); that the subject is considered relevant, but the country has financial constraints (one Inclusive Framework country); that the government is in the process of developing a road map for the implementation of the BEPS actions (one country); and that BEPS is new and relevant staff have not received training yet.

Relating to BEPS Action 7 (Preventing the Artificial Avoidance of Permanent Establishment (PE) Status):

Level of experience that staff working on taxation of non-residents have with taxation of non-residents

On a scale from level 7 (most advanced) to level 1 (beginner):

- one country, which has joined the Inclusive Framework, indicated that staff have level 1;
- one country indicated level 2;
- three countries, two of which have joined the inclusive framework, indicated level 4;
- one country indicated level 5; and
- one country, which has joined the Inclusive Framework, indicated level 6.

Whether staff working on the taxation of non-residents have received training therein, and reasons if this is not the case

Staff from three countries have received training on the taxation of non-residents (one of them is a country that has joined the Inclusive Framework).

Two of the other four countries expressed as reasons for the lack of training that the subject is considered relevant, but not a priority (one country), and that it is relevant, but too complex/costly to administer in terms of financial and technical resources (one Inclusive Framework country).

Relating to BEPS Actions 8–10 (Aligning Transfer Pricing Outcomes with Value Creation):

Level of experience that staff working on transfer pricing have with transfer pricing

On a scale from level 7 (most advanced) to level 1 (beginner):

- two countries, one of which has joined the Inclusive Framework, indicated that staff have level 3;
- four countries, two of which have joined the Inclusive Framework, indicated level 4; and
- one country, which has joined the Inclusive Framework, indicated level 6.

Whether staff working on transfer pricing have received training on transfer pricing, and reasons if this is not the case

Staff from six countries have received training on transfer pricing.

The other country, which is a country that has joined the Inclusive Framework, expressed as the reason for staff not receiving training that the subject is considered relevant, but too complex/costly to administer in terms of financial resources.

Whether staff working on transfer pricing have received specific training on OECD/G20 BEPS-related recommendations (and reasons if this is not the case); and if staff has received training, what the main aspects of this training were

Staff from four countries have received specific training on OECD/G20 BEPS-related recommendations.

One of the other three countries expressed as a reason for the lack of training that the training was requested from the OECD, but has not yet been delivered. The other country expressed that the subject is considered relevant, but is too complex/costly to administer in terms of financial and technical resources. The third country expressed that BEPS is new. These three countries have joined the Inclusive Framework.

Two of the four countries that have received this specific training expressed that it was short-term training (one week) and that it was organized by ATAF. In the case of one of these two countries, staff have attended three separate trainings relating to policy aspects and the study of cases relating to intragroup services and intangibles. Staff of the other of these two countries have attended only one ATAF course.

In the case of the other two countries that received training, in one case staff attended training from the WBG and, in the other, staff participated in two training programmes organized by CIAT-SETCO, which were long-term training programmes provided by the tax officials from other tax administrations.

Relating to BEPS Action 13 (Country-by-Country Reporting):

Level of experience that staff working on exchange of information have with exchange of information

On a scale from level 7 (most advanced) to level 1 (beginner):

- two countries, one of which have joined the Inclusive Framework, indicated that staff have level 1;
- two countries, which have joined the Inclusive Framework, indicated level 3;
- two countries, which have joined the Inclusive Framework, indicated level 4; and
- one country indicated level 6.

Whether staff working on exchange of information have received training on exchange of information, and reasons if this is not the case

Staff from four countries, working on exchange of information, have received specific training on exchange of information. Only two of these countries have joined the Inclusive Framework.

One of the other three countries, which is a country that has joined the Inclusive Framework, expressed as a reason for the lack of training that the subject is considered relevant, but is too complex/costly to administer in terms of financial and technical resources. The other countries did not provide a reason.

Whether staff working on exchange of information have received specific training on OECD/G20 BEPS Country-by-Country Reporting (and reasons if this is not the case). If staff has received training, what the main aspects of this training were

Staff from only two countries, working on exchange of information, have received specific training on OECD/G20 BEPS Country-by-Country Reporting (CbCR). Only one of these countries has joined the Inclusive Framework.

The other five countries expressed as reasons for the lack of training:

- one country that has joined the Inclusive Framework: the training was requested from the OECD, but it has not been delivered yet;
- two countries that have joined the Inclusive Framework: the subject is considered relevant, but is too complex/costly to administer in terms of financial resources;
- one country: training is conditional upon approval of BEPS CbCR; and
- one country: the tax administration is not aware of BEPS CbCR.

Concerning the training, one country expressed that staff are currently following this type of training. It is training in international taxation focused on the exchange of information (agreements, transparency standards and automatic exchange of information). The training is long term, organized by the CIAT-SETCO Programme, and it is provided by a tax official from another tax administration. The other country mentioned that the training was about recovering taxes through EOI, drafting an EOI Request and jurisdictional aspects,

confidentiality, EOI manual, and the use of EOI to investigate complex tax evasion arrangements involving multiple jurisdictions.

6. Answers to block E: IT Infrastructure

Questions of this block deal with the IT infrastructure and the skilled staff of a country's tax administration and its capacity to analyse information collected or received:

- IT infrastructure and skilled staff available to collect, store and analyse data relating to transfer pricing, including data received from another country; and
- IT infrastructure and skilled staff available to implement CbCR.

IT infrastructure and skilled staff available to collect, store and analyse data relating to transfer pricing, including data received from another country

Six out of seven countries stated that they do not have an IT infrastructure and skilled staff available to collect, store and analyse data relating to transfer pricing. These countries expressed as reasons:

- lack of necessary software (five countries, two of which have joined the Inclusive Framework);
- lack of necessary hardware, including stable electricity supply (three countries, all of which have joined the Inclusive Framework); and
- lack of IT staff expertise (four countries, two of which have joined the Inclusive Framework).

One country highlighted that electricity supply is a major issue in the country, specifically, the need for a back-up system. The same country also pointed out that it does not have an online taxpayer registration system.

Concerning transfer pricing data received from another country, only two countries stated to have the IT infrastructure and the skilled staff available to analyse and use the received information. Both countries have signed up for the Inclusive Framework.

IT infrastructure and skilled staff available to implement Country-by-Country Reporting

This section deals with IT infrastructure and skilled staff available to implement CbCR, specifically (1) to guarantee taxpayer data protection; (2) to work with the OECD XML Schema; and (3) to ensure that an appropriate encryption method and a method for electronic data transmission are in place.

Only one country has the IT infrastructure and the skilled staff available to implement CbCR as described above. Another country stated that it has the IT infrastructure and the skilled staff available to implement numbers (1) and (3) above. These two countries have signed up for the Inclusive Framework.

Concerning the OECD XML Schema, the country that does have an IT infrastructure and skilled staff available, expressed that the tax information management software was developed and implemented with the technical and financial support of a Swiss government.

The other countries expressed as reasons for not being able to guarantee data protection:

- lack of necessary hardware (including stable electricity supply) (two countries);
- lack of necessary software (four countries); and
- lack of IT staff expertise (four countries).

Countries expressed as reasons for not being able to work with the OECD XML Schema:

- lack of necessary hardware (including stable electricity supply) (three countries);
- lack of necessary software (four countries);
- lack of IT staff expertise (four countries); and
- lack of financial resources (one country).

Countries expressed as reasons for not being able to ensure that an appropriate encryption method and method for electronic data transmission are in place:

- lack of necessary hardware (including stable electricity supply) (three countries);
- lack of necessary software (four countries); and
- lack of IT staff expertise (four countries).

One of the two countries, which has the IT infrastructure and the skilled staff available to ensure that an appropriate encryption method and method for electronic data transmission are in place, explained that the tax administration has an IT master plan and has developed business software that meets international standards with advanced programming tools. Moreover, it has put in place a data repository (info centre) with technical assistance from the WBG, which meets access security requirements by several other jurisdictions.

Annex III – Brief description of BEPS Actions⁷²

Action 1 – Addressing the Tax Challenges of the Digital Economy

This action analyses BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the BEPS Project. It concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself and proposes technical options to deal with the tax challenges of the digital economy.

Action 2 – Neutralising the Effects of Hybrid Mismatch Arrangements

This action provides a common approach which facilitates the convergence of national practices through domestic and treaty rules to neutralise such arrangements. It helps to prevent double non-taxation by eliminating the tax benefits of mismatches and to put an end to costly multiple deductions for a single expense, deductions in one country without corresponding taxation in another, and the generation of multiple foreign tax credits for one amount of foreign tax paid.

Action 3 – Designing Effective Controlled Foreign Company Rules

This action sets out recommendations in the form of building blocks of effective CFC rules, while recognising that the policy objectives of these rules vary among jurisdictions. It identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard.

Action 4 – Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

This action provides a common approach to facilitate the convergence of national rules in the area of interest deductibility. It aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased co-ordination of national rules in this space.

Action 5 – Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

⁷² Extracted from OECD Inclusive Framework on BEPS. Progress Report July 2016 – June 2017, pg. 38-40. <http://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf>

This action sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the “nexus” approach. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange.

Action 6 – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

This action includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. It also contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.

Action 7 – Preventing the Artificial Avoidance of Permanent Establishment Status

This action includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.

Actions 8–10 – Aligning Transfer Pricing Outcomes with Value Creation

Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to value. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them. It also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services.

Action 11 – Measuring and Monitoring BEPS

This action assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data

limitations, a dashboard of six BEPS indicators has been constructed. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time.

Action 12 – Mandatory Disclosure Rules

This action provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers.

Action 13 – Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

This action contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities.

Action 14 – Making Dispute Resolution Mechanisms More Effective

Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure.

Action 15 – Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

This action explored the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. This led to the Multilateral

Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was adopted in November 2016.

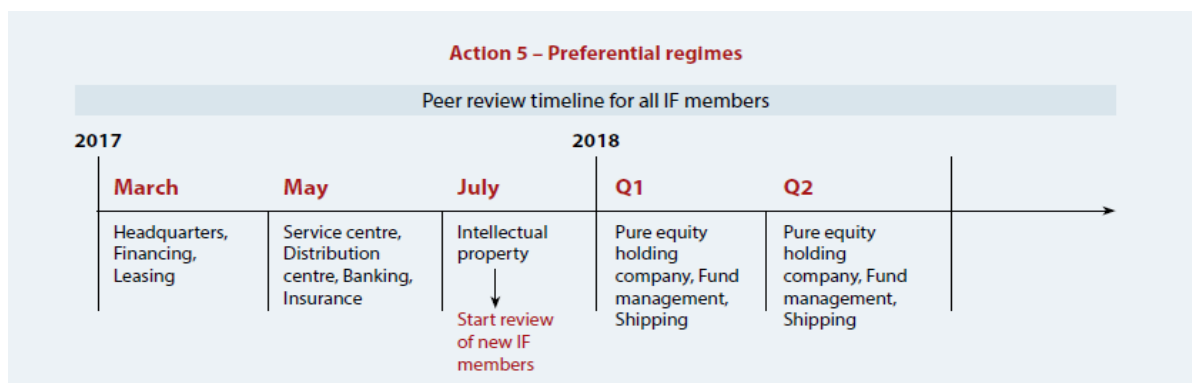
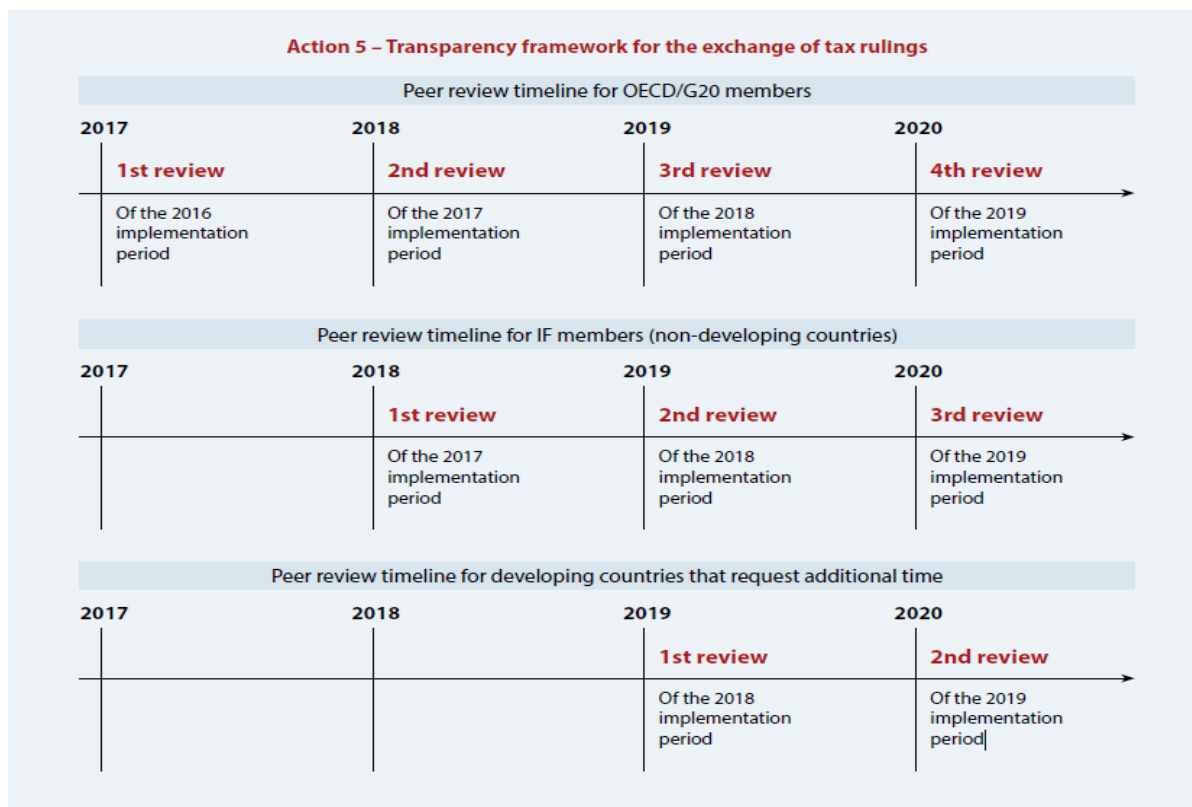
Annex IV – List of Members of the Inclusive Framework on BEPS (November 2017)

- | | | | |
|-----|------------------------------|-----|----------------------------------|
| 1. | Andorra | 23. | Congo |
| 2. | Angola | 24. | Costa Rica |
| 3. | Argentina | 25. | Côte d'Ivoire |
| 4. | Australia | 26. | Croatia |
| 5. | Austria | 27. | Curaçao |
| 6. | Barbados | 28. | Czech Republic |
| 7. | Belgium | 29. | Democratic Republic of the Congo |
| 8. | Belize | 30. | Denmark |
| 9. | Benin | 31. | Djibouti |
| 10. | Bermuda | 32. | Egypt |
| 11. | Botswana | 33. | Estonia |
| 12. | Brazil | 34. | Finland |
| 13. | British Virgin Islands | 35. | France |
| 14. | Brunei Darussalam | 36. | Gabon |
| 15. | Bulgaria | 37. | Georgia |
| 16. | Burkina Faso | 38. | Germany |
| 17. | Cameroon | 39. | Greece |
| 18. | Canada | 40. | Guernsey |
| 19. | Cayman Islands | 41. | Haiti |
| 20. | Chile | 42. | Hong Kong (China) |
| 21. | China (People's Republic of) | 43. | Hungary |
| 22. | Colombia | 44. | Iceland |

45. India
46. Indonesia
47. Ireland
48. Isle of Man
49. Israel
50. Italy
51. Jamaica
52. Japan
53. Jersey
54. Kazakhstan
55. Kenya
56. Korea
57. Latvia
58. Liberia
59. Liechtenstein
60. Lithuania
61. Luxembourg
62. Macau (China)
63. Malaysia
64. Maldives
65. Malta
66. Mauritius
67. Mexico
68. Monaco
69. Montserrat
70. Netherlands
71. New Zealand
72. Nigeria
73. Norway
74. Oman
75. Pakistan
76. Panama
77. Papua New Guinea
78. Paraguay
79. Peru
80. Poland
81. Portugal
82. Romania
83. Russia
84. San Marino
85. Saudi Arabia
86. Senegal
87. Seychelles
88. Sierra Leone
89. Singapore
90. Slovak Republic
91. Slovenia
92. South Africa
93. Spain
94. Sri Lanka
95. Sweden
96. Switzerland
97. Thailand
98. Turks and Caicos Islands

- | | | | |
|------|----------------|------|----------|
| 99. | Turkey | 103. | Uruguay |
| 100. | Ukraine | 104. | Viet Nam |
| 101. | United Kingdom | | |
| 102. | United States | | |

Annex V – Schedules for peer reviews of BEPS minimum standards⁷³

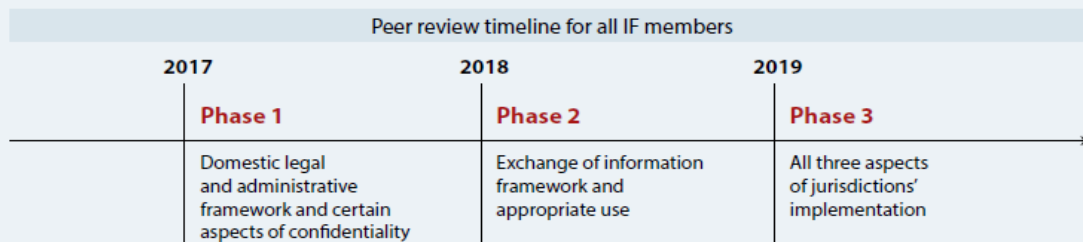


⁷³ Extracted from OECD Inclusive Framework on BEPS. Progress Report July 2016 – June 2017, pages 38-40; available at <http://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf>.

Action 6 – Treaty shopping



Action 13 – Country-by-Country reporting



Action 14 – Mutual agreement procedures*

1st batch 5 December 2016	2nd batch 7 March 2017	3rd batch by August 2017	4th batch by December 2017	5th batch by April 2018	6th batch by August 2018	7th batch by December 2018	8th batch by April 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Brunei
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Curacao
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Guernsey
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Isle of Man
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Jersey
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	Monaco
		Spain	Portugal	Turkey	South Africa	Saudi Arabia	San Marino

*Not all Inclusive Framework members are currently scheduled for review on Action 14. The Terms of Reference for the Peer Review of Action 14 provides (paragraph 7): the MAP Forum should defer the review of any such member that is a developing country and is not an OECD or G20 country if that member has not yet encountered meaningful levels of MAP requests and there is no feedback from other members of the FTA MAP Forum indicating that the jurisdiction's MAP regime requires improvement.