

INTERNATIONAL TAXATION

A Dialogue with Developing Countries



Monday, April 20, 2015
8:30am to 1:00pm
IMF, HQ2 Conference Hall 2

A conference
hosted by



For an invitation, or information, call 202-623-6422,
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<http://www.imf.org/external/np/exr/seminars>

Participants

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6	Benin	Moussa Akinotcho
7	Benin	Alphonse Afantohou
8	Benin	Sezan Charles Sourou
9	Benin	Sacca Boco Charles
10	Benin	Houenou Delfin
11	Bloomberg, BNA	Michael Durst
12	Burkina Faso	Jean Gustave Sanon
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16	Congo, Dem. Rep. of	Deogratias Mutombo Mwana Nyembo
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19	Cote D'Ivoire	Fiacre Adopo
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22	Ghana	Seth Terkper
23	Guinea	Madikaba Camara
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25	Guinea	Kerfalla Yansané
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27	Guinea	Mamady Gassomy
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32	International Senior Lawyers Project (ISLP)	Joseph Bell
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34	International Tax & Investment Center	Dan Witt
35	Kazakhstan	Timur Suleimenov
36	Kosovo	Berat Havolli
37	Madagascar	Arison Andrimalala
38	Mauritania	Moctar Ould Djay
39	Mauritania	Djibril Hamady Niang

40	Natural Resource Governance Institute	Patrick Heller
41	New Rules for Global Finance	Jo Marie Griesgraber
42	Nicaragua	Francisco Jose Abea Lacayo
43	OECD	Grace Perez-Navarro
44	Oxfam	Susana Ruiz Rodriguez
45	Pakistan	Tariq Bajwa
46	Pakistan	Mahmood Shahid
47	PWC	Pamela Olson
48	PWC	Peter Merrill
49	Philippines	Ma. Lourdes B. Recente
50	SAIS	Stephanie Sweet
51	Sudan	Mustafa Holi Yousif
52	Tanzania	Shogholo Charles Msangi
53	Tanzania	William Michael Mhoja
54	Tanzania	Shangari Mwashinga Mkindi
55	Tanzania	Riched Mohamed Bade
56	Tanzania	Tonedeus Muganyiz
57	Tanzania	Albert Mugenyi
58	Tax Analyst	Lee Sheppard
59	UCLA	Eric Zolt
60	Uganda	Adam Mugume
61	Uganda	Matia Kasaija
62	Uganda	Paul Patrick Mwonja
63	Uganda	Patrick Guma Muganda
64	Uganda	Lawrence Kiiza
65	UKAid	Richard Teuten
66	Unilever	Janine Juggins
67	US Treasury	Robert Stack
68	WAEMU	Cheikhe Hadjibou Soumaré
69	WAEMU	Abdou Tahirou
70	WAEMU	Zoenabou Bougouma
71	WAEMU	Boubacar Touré
72	World Bank	Blanca Moreno-Dodson
73	IMF, LEG	Geerten Michielse
74	IMF, LEG	Christophe Waerzeggers
75	IMF (Retired)	Emil Sunley
76	IMF, FAD	Michael Keen
77	IMF, FAD	Ruud de Mooij
78	IMF, FAD	Victoria Perry
79	IMF, FAD	Katherine Baer
80	IMF, FAD	David Wentworth

81	IMF, FAD	Roberto Schatan
82	IMF, FAD	Juan Toro
83	IMF, FAD	Thornton Matheson
84	IMF, FAD	Vitor Gaspar
85	IMF, FAD	Victor Kitange
86	IMF, FAD	Philip Daniel
87	IMF, FAD	Steve Clark

Agenda
International Taxation: A Dialogue with Developing Countries
Monday, April 20, 2015, 8:30am to 1:00pm
IMF-HQ2 Conference Hall 1

8:30 – 8:45	Registration and continental breakfast	
8:45 – 9:00	Welcome Remarks	Vitor Gaspar, Director, Fiscal Affairs Department, IMF
9:00 – 10:15	Tax Incentives and Competition	
	9:00 – 9:15	Presentation of draft G20 Development Working Group Paper on Tax Incentive
	9:15 - 9:45	Panel Discussion
	9:45 – 10:15	Open Discussion
10:15-11:15	Indirect Transfers of Assets	
	10:15-10:35	Overview of Issue
	10:35-11:00	Panel Discussion
	11:00-11:15	Open discussion
11:15-11:30	Coffee Break	
11:30-12:45	BEPS Toolkits	
	11:30-12:00	Overview of Toolkits
	12:00-12:30	Panel Discussion
	12:30-12:45	Open Discussion
12:45-1:00	Closing Discussion	

Discussion Questions: April 20 Dialogue on International Tax Issues, IMF

The following questions are intended to guide and stimulate discussion during the April 20 Dialogue. Please feel free to expand on these areas in regard to their effects, positive or negative, in your own country.

Tax Incentives

Countries frequently offer to foreign or domestic investors various sorts of business tax breaks (“incentives”) to make capital investments in their economies. Yet many governments also raise questions as to whether these incentives are necessary or effective, relative to their costs; some express the view that they are caught in a “race to the bottom,” competing with peer countries by offering such tax incentives. If your country offers any types of investment incentives through your tax system:

- *Why is this done? (i.e., explicit request from specific foreign investors; domestic policy reason such as creating jobs in poorer geographic areas, developing natural resources or other sectors; general advertisement for desirability of doing business in your country, etc.). And did the incentives achieve that goal?*
- *Do you have a view on the relative costs and benefits—explicit measurement? A general sense?*
- *Would it be advantageous for your country if peer governments refrained from this practice, or do you not see this as a problem? If you do see it as a problem, do you have any thoughts on how such a mutually beneficial arrangement could be achieved?*

Indirect Transfers of Assets

By “indirect transfer of assets” we mean the transfer of ownership rights from one non-resident entity to another, the value of which is derived from assets located within your country. (For example: non-resident company X is the parent of resident company A, which owns a valuable mineral license from your country. Company X sells its shares in Company A to another non-resident company Y, with the sale taking place in Europe. Most of the value of the shares in company A can be attributed to the appreciated value of the mineral license to conduct mining in your country.) A question which arises frequently is whether your country would impose an income (i.e., capital gains) tax on the realized price in that transaction. There are both policy/legal issues, and practical administrative issues, in these cases.

- *Would your country impose a tax in such a case?*

- *Has the issue been important for your country?*
- *If yes, how does this work? (e.g., through resident company A? by seeking to reach non-resident company X?) Is this effective?*
- *If you do not seek to tax such transfers, what is the reason?*

Base Erosion and Profit Shifting (“BEPS”) Issues

Several aspects of the G20/OECD BEPS project have been previously identified as of greatest relevance to lower income/non-G20 countries, including issues related to the use and abuse of bi-lateral tax treaties; “transfer pricing” problems, including the use of comparables and the general ability to identify problem transactions and areas; cross border payments for services, such as management fees paid by domestic subsidiaries to foreign headquarters companies; internal loan payments (including excessive interest charges/”thin capitalization” problems). The BEPS project attempts to mitigate problems in these (and other) areas as between industrial countries, but does not itself address problems related particularly or explicitly to lower income “source” (location of investment) countries. The IMF, World Bank, OECD, and UN have been asked to work together, with developing countries, to develop “toolkits” that would apply BEPS solutions more appropriately in the low income country context. Against that background, your input is sought regarding these matters for your country.

- *Has your country entered in the last 15 years into bi-lateral double tax treaties directly with home countries of investing foreign corporations? With intermediary (third) countries? If so, have the provisions of any of these treaties resulted in a major increase in foreign direct investment and/or reduction in tax revenue that otherwise would have been realized from foreign investments?*
- *Has your revenue administration found problems in assessing and enforcing the appropriate level of cross border payments for services from domestic subsidiaries of foreign investing corporations to their non-resident parent companies? Do you withhold tax when any of these types of payments are made?*
- *Has the use of “loans” and payment of interest within multinational company groups caused reduction in tax revenue for your country? Is your revenue administration well equipped to monitor such interest payments for validity or for conformity with any domestic law limitations on interest deductibility that your country may have?*
- *What do you see as your country’s worst problems in regard to these sorts of issues? What would help your government best to cope with them?*

Programme
Fiscalité internationale : Dialogue avec les pays en développement
Lundi 20 avril 2015, 8h30-13h00
FMI-HQ2 Conference Hall 1

8h30–8h45	Inscription et petit déjeuner continental	
8h45–9h00	Allocution de bienvenue Vitor Gaspar, Directeur, Département des Finances Publiques, FMI	
9h00–10h15	Incitations fiscales et concurrence Président : Lincoln Marais, ATAF	
	9h00–9h15	Présentation du projet de rapport du groupe de travail (DWG) du G20 Ruud de Mooij, FMI Blanca Moreno-Dodson, Banque Mondiale
	9h15–9h45	Intervenants Eric Zolt, UCLA Janine Juggins, Unilever
	9h45–10h15	Débat général
10h15–11h15	Transferts indirects d’actifs Président : Seth Terpker, Ministre de l’Économie, des Finances et du Plan du Ghana	
	10h15-10h35	Exposé du problème Philip Daniel, FMI
	10h35-11h00	Intervenants Pam Olson, PwC Kerfalla Yansané, Ministre d’État, des Mines et de la Géologie de Guinée Lawrence Kiiza, Directeur des Affaires Économiques, Ministère des Finances, du Plan, et du Développement Économique de l’Ouganda
	11h00-11h15	Débat général
11h15-11h30	Pause café	
11h30-12h45	Érosion de la base d’imposition et transfert de bénéfices (BEPS) – Questions liées aux outils Président : Robert Stack, Secrétaire adjoint en charge de la taxation internationale, Trésor américain	
	11h30-12h00	Explication des questions relatives aux « trousseaux à outils » Grace Perez-Navarro, OCDE

	12h00-12h30	Intervenants	Lee Sheppard, Tax Notes Susana Ruiz Rodriguez, OXFAM Francisco Abea Lacayo, Directeur de la Politique Fiscale et des Statistiques, Ministère des Finances du Nicaragua
	12h30-12h45	Débat général	
12h45-13h00	Clôture (débat général et allocution du président de séance)		Président : Michael Keen, FMI

Questions à débattre : Dialogue sur la fiscalité internationale, 20 avril, FMI

Les questions qui suivent serviront de fil conducteur pour animer le débat au cours de la conférence du 20 avril. Veuillez exposer librement vos commentaires sur les différents sujets, et leur incidence positive ou négative dans votre pays.

Incitations fiscales

Beaucoup de pays offrent aux investisseurs étrangers ou nationaux diverses sortes d'incitations fiscales pour qu'ils placent leurs capitaux chez eux. Et pourtant, beaucoup de gouvernements se demandent aussi si ces incitations sont nécessaires ou même efficaces, compte tenu de leur coût. Certains considèrent qu'elles créent un nivellement par le bas, chacun rivalisant avec les autres pays qui proposent ce genre d'incitations. Si le système fiscal de votre pays offre des incitations à l'investissement :

- *Quelle en est la raison? (à la demande explicite d'investisseurs étrangers particuliers; pour des raisons de politique intérieure par exemple liées à la création d'emplois dans des zones géographiques défavorisées, la mise en valeur des ressources naturelles ou d'autres secteurs; effet d'annonce général vantant l'intérêt que présentent les investissements dans votre pays, etc.). Est-ce que les incitations produisent le résultat recherché?*
- *Avez-vous un avis sur les coûts et bénéfices du système ou des chiffres concrets?*
- *Serait-il dans l'intérêt de votre pays que les gouvernements des autres pays s'abstiennent de ce genre de pratique, ou considérez-vous que ce n'est pas un problème? Si vous estimez que cela constitue un problème à vos yeux, avez-vous des idées sur les moyens qui permettraient de parvenir à des accords offrant des avantages réciproques?*

Transferts indirects d'actifs

«Transfert indirect d'actifs» désigne le transfert de droits de propriété, d'une entité non résidente à une autre, sur des actifs implantés dans votre pays. (Par exemple, la société non résidente X est la maison-mère de la société A, qui détient un précieux permis d'exploitation minière dans votre pays. La société X vend ses actions dans la société A à une autre société non résidente Y, et la cession a lieu en Europe. L'essentiel de la valeur des parts de la société A est attribuable à la valeur estimée du permis d'exploitation minière dans votre pays.) La question qui se pose souvent est de savoir si votre pays lèverait un impôt sur le revenu (au titre des plus-values) sur le prix de cette transaction. Ces cas de figure soulèvent des questions juridiques et des questions de politique générale, ainsi que des problèmes administratifs pratiques.

- *Votre pays taxerait-il ce type de transaction?*

- *Est-ce un sujet important pour votre pays?*
- *Dans l'affirmative, comment cela fonctionne-t-il? (en taxant la société résidente A? en cherchant à taxer la société non résidente X?) Est-ce que le système fonctionne?*
- *Si vous ne cherchez pas à taxer ce genre de transferts, quelle en est la raison?*

Érosion de la base d'imposition et transfert de bénéfices (projet «BEPS»)

Plusieurs aspects du projet conjoint G20/OCDE ont été signalés comme particulièrement pertinents pour les pays à faible revenu et les pays non membres du G20, dont l'emploi et l'abus des conventions fiscales bilatérales (conventions de double imposition); les problèmes de «prix de transfert», notamment l'utilisation d'éléments comparables et la difficulté générale à identifier les transactions et les domaines suspects; les paiements transfrontaliers de services, par exemple les frais de gestion versés par les filiales à leur maison mère dont le siège est à l'étranger; les crédits internes au sein des groupes multinationaux (y compris le problème des charges d'intérêts excessives ou celui de la «sous-capitalisation»). Le but du projet BEPS est de remédier aux problèmes qui se posent dans ces domaines (et d'autres) entre pays industrialisés, mais il ne traite pas particulièrement ni explicitement des problèmes liés aux pays à faible revenu «sources». Le FMI, la Banque mondiale, l'OCDE et l'ONU ont été chargés d'élaborer ensemble, avec les pays en développement, des «trousses à outils» qui permettraient d'appliquer de manière plus appropriée dans les pays à faible revenu les solutions aux problèmes de l'érosion de la base fiscale et des transferts de bénéfices. C'est dans ce contexte que nous souhaiterions recueillir le point de vue de votre pays.

- *Votre pays a-t-il conclu au cours de 15 dernières années des conventions bilatérales de double imposition directement avec les pays d'origine des sociétés étrangères qui ont investi dans votre pays? Avec des pays intermédiaires (tiers)? Dans l'affirmative, les dispositions de ces conventions ont-elles produit un important accroissement des investissements directs étrangers et/ou une baisse des recettes fiscales qu'auraient sinon rapportées les investissements étrangers?*
- *L'administration fiscale de votre pays a-t-elle eu des difficultés à évaluer et à taxer de manière appropriée les paiements transfrontaliers de services versés par les filiales de sociétés étrangères établies dans votre pays à leur maison mère dont le siège est à l'étranger? Imposez-vous une retenue à la source sur ce type de paiements?*
- *Le recours aux «crédits internes» et le versement d'intérêts au sein des groupes multinationaux ont-ils causé une baisse des recettes fiscales de votre pays? L'administration fiscale de votre pays a-t-elle les moyens de vérifier la validité de ces paiements d'intérêts ou leur conformité avec la législation limitant la déductibilité des intérêts qui peut être applicable dans votre pays?*

- *Quels sont à votre avis, parmi les problèmes énumérés ci-dessus, ceux qui ont le plus de gravité pour votre pays? Quel serait le meilleur moyen d'aider votre pays à y faire face?*

Programa
Tributación internacional: Diálogo con los países en desarrollo
Lunes 20 de abril de 2015, 8.30 h. a 13.00 h.
Sala de conferencias 1 del edificio HQ2 del FMI

8.30 h. – 8.45 h.	Inscripción y desayuno continental	
8.45 h. – 9.00 h.	Palabras de bienvenida	Vitor Gaspar, Director, Departamento de Finanzas Públicas del FMI
9.00 h. – 10.15 h.	Incentivos tributarios y competencia	
	9.00 h. – 9.15 h.	Presentación del borrador del Grupo de Trabajo sobre el Desarrollo (DWG) del G-20
	9.15 h. – 9.45 h.	Panelistas
	9.45 h. – 10.15 h.	Debate general
10.15 h.-11.15 h.	Transferencias indirectas de activos	
	10.15h. -10.35 h.	Exposición del problema
	10.35 h.-11.00 h.	Panelistas
	11.00 h. -11.15 h.	Debate general
11.15 h.-11.30 h.	Pausa para el café	
11.30 h. -12.45 h.	BEPS – Cuestiones relativas a los conjuntos de instrumentos	
	11.30 h. -12.00 h.	Explicación de los conjuntos de instrumentos
	12.00 h.-12.30 h.	Panelistas
	12.30 h.-12.45 h.	Debate general
12.45 h.-13.00 h.	Clausura	

Preguntas para el debate: Diálogo sobre la tributación internacional,
20 de abril, FMI

Las preguntas siguientes servirán de guía para estimular el debate durante la conferencia que se celebrará el 20 de abril. Le invitamos a plantear libremente sus comentarios sobre los diferentes temas y los efectos, positivos o negativos, que tienen en su propio país.

Incentivos tributarios

Muchos países ofrecen a los inversionistas extranjeros o nacionales diversos tipos de exenciones fiscales (“incentivos”) para que realicen inversiones de capital en sus economías. No obstante, muchos gobiernos también se plantean si estos incentivos son necesarios o eficaces, teniendo en cuenta sus costos. Algunos consideran que conducen a una “carrera destructiva” en la que cada país compite con los otros países que ofrecen este tipo de incentivos tributarios. Si el sistema fiscal de su país ofrece algún tipo de incentivo a la inversión:

- *¿Por qué se ofrecen estos incentivos? (por ejemplo, se trata de una petición expresa de inversionistas extranjeros específicos; existen razones de política interna, como por ejemplo, la creación de empleo en zonas geográficas más pobres, el desarrollo del sector de recursos naturales u otros sectores; para anunciar al público en general el atractivo que presenta la inversión en su país, etc.). ¿Produjeron estos incentivos los resultados esperados?*
- *¿Tiene usted alguna opinión con respecto a los costos y beneficios del sistema o cifras concretas? ¿Alguna idea general?*
- *¿Sería beneficioso para su país que los gobiernos de otros países se abstuvieran de este tipo de práctica, o considera usted que esto no constituye un problema? Si cree que esto es un problema, ¿tiene usted alguna idea sobre la forma de llegar a un acuerdo mutuamente beneficioso?*

Transferencias indirectas de activos

“Transferencia indirecta de activos” significa la transferencia de los derechos de propiedad, de una entidad residente a otra, sobre los activos ubicados dentro de su país (por ejemplo: una sociedad no residente X es la casa matriz de una sociedad residente A, que posee un valioso permiso de explotación minera en su país. La sociedad X vende sus acciones en la sociedad A a otra sociedad no residente Y, y la venta tiene lugar en Europa. La mayor parte del valor de las acciones de la sociedad A puede atribuirse al valor estimado del permiso de explotación minera en su país.). La cuestión que se plantea a menudo es si su país gravará un impuesto sobre la renta (es decir, sobre las ganancias de capital) sobre el precio de dicha transacción. Estos casos revisten cuestiones jurídicas y de política general, así como cuestiones administrativas prácticas.

- *¿Su país gravaría este tipo de transacción?*
- *¿Es un tema importante para su país?*
- *En caso afirmativo, ¿cómo funciona? (por ejemplo, ¿por medio de la sociedad residente A? ¿apuntando a gravar a la sociedad no residente X?) ¿Es un sistema eficaz?*
- *Si usted no apunta a gravar este tipo de transferencias, ¿cuál es la razón?*

Erosión de la base imponible y transferencia de ganancias (proyecto “BEPS”)

Varios aspectos del proyecto BEPS del G-20 y la OCDE se han considerado particularmente relevantes para los países de bajo ingreso y los que no son miembros del G-20, tales como los relacionados con el uso y abuso de tratados fiscales bilaterales; los problemas de “precios de transferencia”, entre los cuales está el uso de elementos comparables y la dificultad general para identificar las transacciones y los ámbitos problemáticos; los pagos transfronterizos de servicios, como por ejemplo, las comisiones por gestión pagadas por las filiales a la casa matriz ubicada en el extranjero; los pagos de préstamos internos (incluido el problema de los cargos por intereses excesivos o el de la “infracapitalización”). El objetivo del proyecto BEPS es mitigar los problemas que se plantean en estos ámbitos (y en otros) entre los países industriales, pero no aborda en particular o explícitamente los problemas relacionados con los países de bajo ingreso “fuentes” (ubicación de la inversión). Se ha solicitado al FMI, el Banco Mundial, la OCDE y las Naciones Unidas que elaboren conjuntamente, con los países en desarrollo, “conjuntos de instrumentos” que permitan aplicar de manera más adecuada en los países de bajo ingreso las soluciones a los problemas de la erosión de la base imponible y la transferencia de ganancias. En este contexto, le agradeceríamos que nos indicara el punto de vista de su país con respecto a estas cuestiones.

- *¿Ha suscrito su país en los últimos 15 años tratados bilaterales de doble imposición directamente con los países de origen de las sociedades extranjeras que han invertido en su país? ¿Con países intermediarios (terceros)? En caso afirmativo, ¿han producido las disposiciones de estos tratados un importante aumento de la inversión extranjera directa y/o una disminución del ingreso tributario que, de lo contrario, se habría recaudado de las inversiones extranjeras?*
- *¿Tiene dificultades la administración fiscal de su país para evaluar y gravar de manera adecuada los pagos transfronterizos de servicios realizados por las filiales de sociedades extranjeras ubicadas en su país a sus casas matrices ubicadas en el extranjero? ¿Retiene impuestos en la fuente sobre este tipo de pagos?*
- *¿Ha causado el uso de “préstamos” y el pago de intereses dentro de los grupos multinacionales una disminución del ingreso tributario de su país? ¿Tiene la administración fiscal de su país los medios necesarios para realizar un seguimiento*

de la validez de estos pagos de intereses o su adecuación a la legislación nacional sobre las deducciones de intereses que se aplique en su país?

- *Entre los problemas enumerados anteriormente, ¿cuáles son los más graves para su país? ¿Cuál sería la mejor forma de ayudar a su gobierno a hacer frente a estos problemas?*

TAX INCENTIVES

Ruud de Mooij (IMF)
Blanca Moreno-Dodson (World Bank)

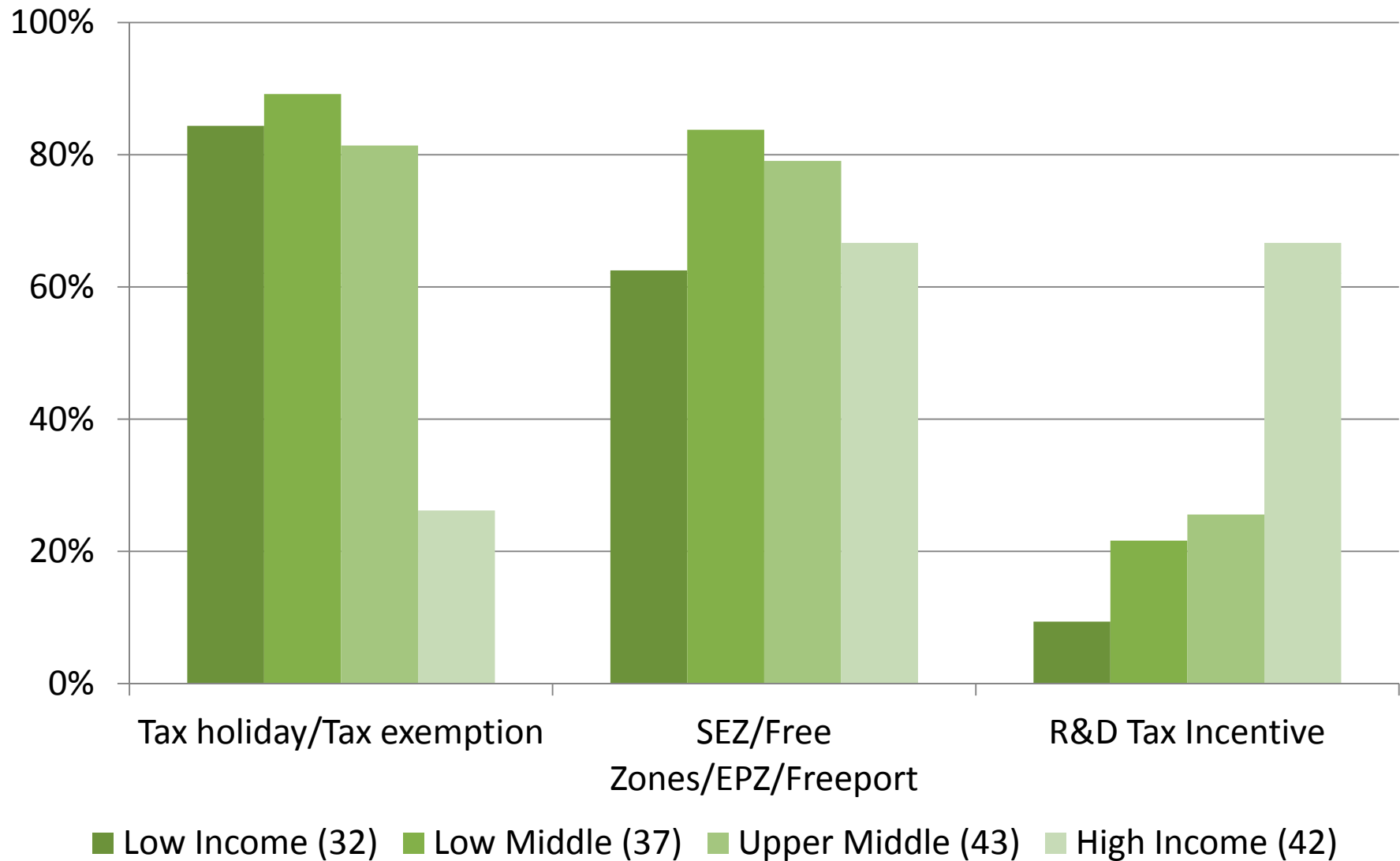
International Taxation: A Dialogue with Developing Countries
Washington DC, April 20, 2015

Context

- Request to IOs* from G20 Development Working Group for a paper on “Options for low income countries’ effective and efficient use of tax incentives for investment”
- Focus is on ‘central government’ – ‘investment’ – ‘tax incentives’ – ‘low income countries’
 - Using available empirical work (IOs, academic)
 - IO experience in both LICs and elsewhere

*IMF, World Bank, OECD, UN

Varying importance of tax incentives



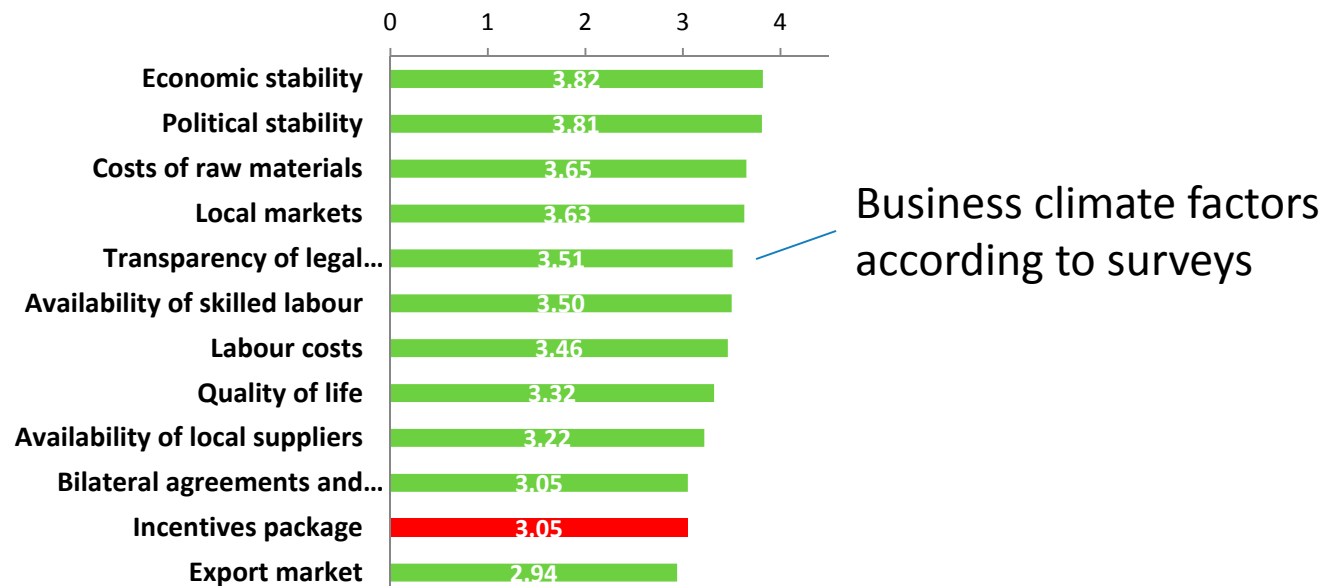
Scope of IO report

- “Effective” and “Efficient”
- Guidance in the use
 - Design; Governance
- Reform
- International Coordination
- Toolkit for Assessment
 - Benefit-Cost Analysis; Good Governance Template

Effective and Efficient
(or: when do Benefits Exceed Costs?)

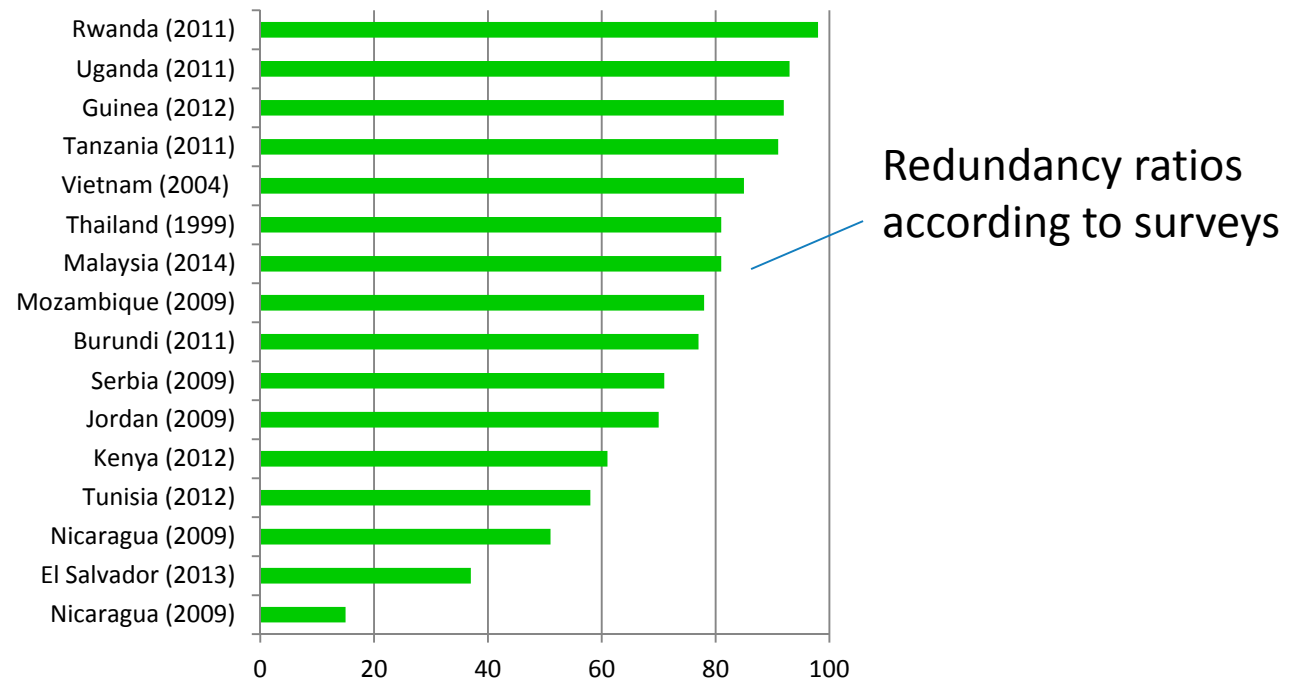
Effectiveness

- Attracting FDI important for ‘development’, but...
 - ... expectations on effectiveness of tax incentives should be tempered!
 - See investor surveys & econometric/anecdotal evidence
 - Displacement effects often considerable



Efficiency

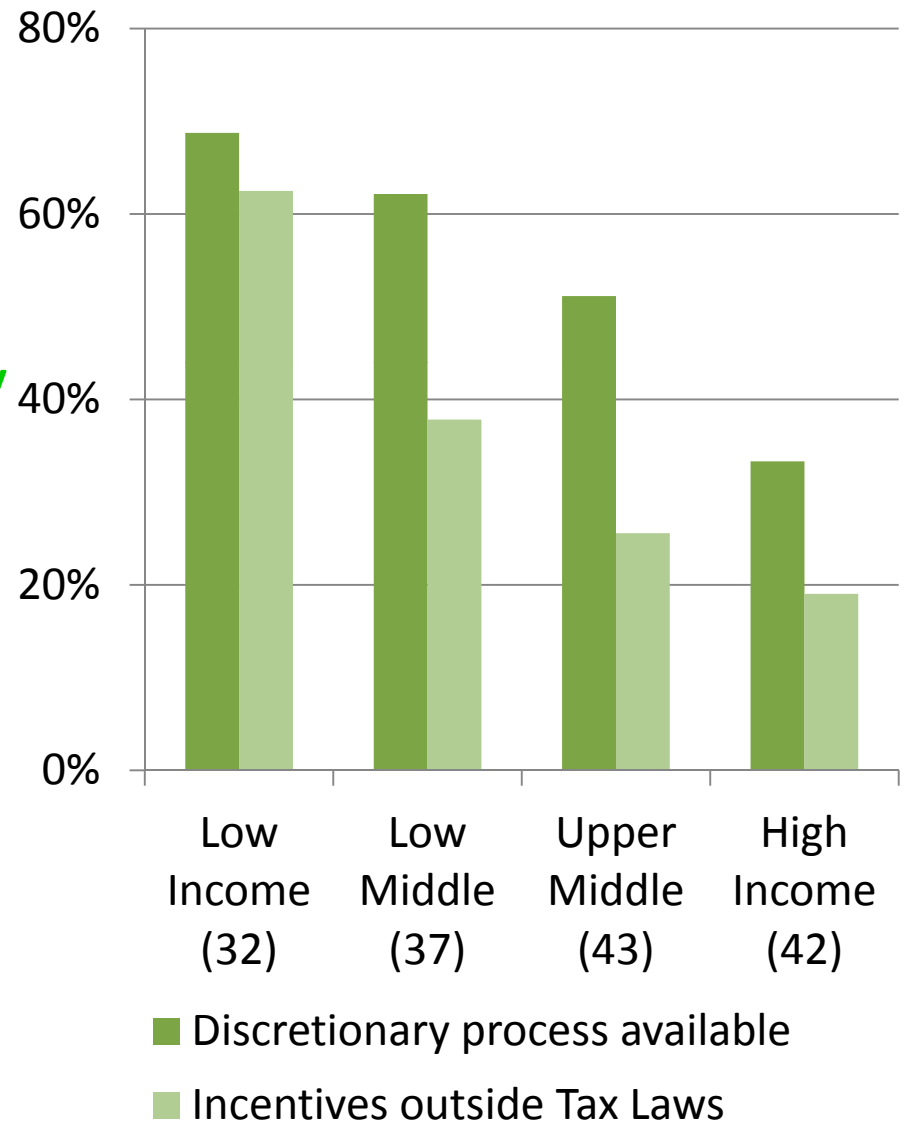
- Revenue cost should be made more visible (through tax expenditure reviews)
 - Where available, estimated to be (very) large ...
 - ... and exemplified by indirect effects ...
 - ... with especially high opportunity costs in LICs



Guidance in the Use

Best practice

- Design
 - Ban tax holidays
- Governance/Transparency
 - Rules, rather than discretion
 - Embedded in the tax law
 - Pivotal role Ministry of Finance in granting



Reform

Why is it so hard?

- Have observers understated the benefits of incentives?
 - Spillover benefits
- Lack of transparency
 - Costs often unclear, while alleged benefits can be easy to point to, losses more nebulous
- Incentives create vested interests
 - Easier for the few who gain a lot to lobby for than for the many who each lose a little to lobby against

But: some encouraging examples

- **Jamaica**: Removed many discretionary incentives in 2013
- **Egypt**: began phasing out holidays in 2005 – inward FDI doubled
- **Mauritius**: Aligned EPZ with rest of economy and removed incentives (except for small businesses)

International Coordination

Regional coordination

- Tax incentives are instances of tax competition, making all worse off
- Some coordination efforts (SADC, EAC, WAEMU, Central America)
- **But not easy:** to be effective, need to ...
 - Cover full enough range of instruments
 - E.g. If agree to eliminate incentives, may compete on general CIT rate
 - Cover wide enough range of countries
 - Have proper supranational enforcement mechanism

Questions

- How common are positive/negative experiences with incentives?
- Are some types more effective than others?
- What are the obstacles to reform?
- What might help to overcome them?

*IMF Conference on International Taxation: A Dialogue with
Developing Countries (Monday, April 10, 2015)*

Tax Incentives: Protecting the Tax Base

Eric M. Zolt, UCLA School of Law

Overview of Presentation

- Benefits and costs of tax incentives
- Political economy of tax incentives
- Potential abuses
- Influence of tax systems in developed countries on the desirability and effectiveness of tax incentives in developing countries
- How does the BEPS project change the tax environment for tax incentives?

Benefits of Tax Incentives

- If properly designed and implemented, tax incentives can be a useful tool in attracting investments that would not have been made without tax benefits
- By increasing investment by reducing the after-tax cost of investment, countries may realize
 - Increased capital transfers
 - Transfers of know-how and technology
 - Increased employment and improved workforce
 - Assistance in improving conditions in less-developed areas
- Spillover effects
 - Increased economic activity from related suppliers and consumers
 - Increased tax revenue from investor (after tax incentives have expired) or from employees, suppliers and consumers

Costs of Tax Incentives

- Erosion of tax base
 - Investments that would have taken place even without tax incentives
 - Investors exploiting tax incentives to other activities or other types of income (abuses and leakages)
- Efficiency and welfare costs
 - Shift tax burden to immobile tax bases (labor)
 - Encourage activity that is not economically viable without government subsidy
- Complexity
- Undermine tax system—increase tax burden on non-qualifying activities
- Lobbying and unproductive rent seeking activities
- Compliance considerations
- Equity --disadvantage other investors
- Discretionary practices create opportunities for corruption
- Tax degradation (race to the bottom)

Estimates of Direct Costs of Tax Incentives

- Tax expenditure budgeting
- Methodology for estimating the costs of a particular tax incentive program
 - Determine the number of taxpayers covered by the program
 - Estimate the revenue, compliance and enforcement costs
 - Information and data requirement
 - “Packages” of behavioral assumptions

Political Economy of Tax Incentives

- Why do countries continue to use tax incentives in light of the mostly negative economic evidence of their effectiveness?
 - “This time is different”
 - Politicians need to do something to improve economic growth—tax incentives are relatively easy to adopt and costs are less transparent
 - Capture theories
 - Outside capture (economic elite seeking to minimize tax liability)
 - Inside capture (government agencies seeking to maximize the level of new investments without major concern for tax liability)

Political Economy – Unanswered empirical question

- Do countries with “better” institutions have better results on either not adopting tax incentives or designing them in a way that improves effectiveness?
 - Greater transparency (necessary, not sufficient)
 - Better decision-making structure on designing and granting tax incentives
 - Better ability to estimate the costs and benefits of tax incentives
 - Better ability to monitor for abuses of tax incentive regimes

Tesla “Gigafactory”– the Process

- Announce plans to build facilities to manufacture “affordable” lithium-ion” batteries at a cost of \$5 billion and 6,200 jobs
- Invite economic development officials from 7 states to visit the Tesla factory
- Give states 3 weeks to put together a proposal as to what incentives they would provide (tax breaks, free land, infrastructure improvements, and cash) and to complete responses to questionnaire (90 questions)
- Tesla selected four states as “Gigafactory Location Finalists”

Tesla “Gigafactory” – the Winning Bid

- Nevada offers a total package of \$1.4 billion
 - Free land, electricity discounts, and infrastructure improvements (\$113 million)
 - Tax incentives
 - Sales tax abatement on equipment and construction material (\$725 million)
 - Property tax abatement (\$350 million)
 - Payroll tax abatement (\$30 million)
 - Transferable tax credits that Tesla could sell to other companies (\$195 million)

Largest US State Tax Incentives

1. Washington: Boeing \$8.7 billion
2. New York: Alcoa \$5.6 billion
3. Washington: Boeing \$3.2 billion
4. Oregon: Nike \$2 billion
5. New Mexico: Intel \$2 billion
6. Louisiana: Cheniere Energy \$1.7 billion
7. Pennsylvania: Royal Dutch Shell \$1.65 billion
8. Missouri: Cemer Corp. \$1.64 billion
9. Mississippi: Nissan \$1.25 billion

Top 10 Abuses of Tax Incentive Regimes

1. Existing firms transform to new entities to qualify for incentives.
2. Domestic firms restructure as foreign investors.
3. Transfer pricing schemes with related entities (sales, services, loans, royalties, management contracts).
4. Churning or fictitious investments (lack of recapture rules).
5. Schemes to accelerate income (or defer deductions) at the end of a tax holiday period.
6. Overvaluation of assets for depreciation, tax credit, or other purposes.
7. Employment and training credits -- fictitious employees and phony training programs.
8. Export zones – leakages into domestic economy.
9. Regional investment incentives and Enterprise zones – divert activities to outside the region or zone.
10. Disguise or bury non-qualifying activities into qualifying activities.

Transparency

- Legal and regulatory dimension
 - Explicit rationale for granting tax incentives
 - Incentives be part of tax law and not part of informal decrees or executive orders
 - Sunset provisions
- Economic dimension
 - Determine effective tax burden and “relief” provided by tax incentives
 - Tax expenditure analysis—estimate revenue costs
 - Periodic review of effectiveness of tax incentive programs
- Administrative dimension
 - Qualifying criteria that are clear and objective
 - Automatic vs. discretionary entitlement
 - Reporting and filing requirements

OECD Draft Principles to Enhance the Transparency and Governance of Tax Incentives for Investment in Developing Countries

1. Make public a statement of all tax incentives for investments and their objectives within the governing framework.
2. Provide tax incentives for investment through tax laws only.
3. Consolidate all tax incentives for investment under the authority of one government body, where possible.
4. Ensure tax incentives for investments are ratified through the lawmaking body or parliament.
5. Administer tax incentives for investment in a transparent manner
6. Calculate the amount of revenue forgone attributable to tax incentives for investment and publicly release a statement of tax expenditures.
7. Carry out periodic review of the continuance of existing tax incentives by assessing the extent to which they meet the stated objectives.
8. Highlight the largest beneficiaries of tax incentives for investment by specific provision in a regular statement of tax expenditures, where possible.
9. Collect data systematically to underpin the statement of tax expenditures for investment and to monitor the overall effects and effectiveness of individual tax incentives.
10. Enhanced regional cooperation to avoid harmful tax competition.

Tax Incentive Review Project

1. Compile list of existing tax incentives in your country
2. Review process of designing and granting tax incentives among different government agencies
3. Review any reporting requirements for taxpayers receiving tax incentives, examine current efforts to monitor compliance, and review penalties for non-compliance
4. Review past and current efforts to evaluate effectiveness of tax incentives
5. Develop methodology for evaluating the effectiveness of existing tax incentives
6. Develop methodology for evaluating the costs and benefits of new tax incentives.

Impact of Other Countries' Tax Regimes on Effectiveness of Tax Incentives

- Globalization and increased mobility of capital and labor, countries no longer able to design tax rules in isolation
 - Need to consider tax regimes of countries of foreign investors (tax sparing arrangements)
 - Need to consider the tax regimes of other countries in the region
 - As potential investors
 - As competitors for foreign investment
 - As potential customers (particularly trade taxes)

Revenue Transfer from Developing Countries to Developed Countries

- **Simple model:** foreign investor invest directly in a developing country either through a branch or through a foreign subsidiary that immediately repatriates any profits
- Tax regime of country of foreign investor
 - Foreign investor is taxed on their world-wide income
 - Foreign investor is allowed a credit for foreign income tax paid
- Foreign investor's aggregate tax liability unchanged
 - Little or no tax in developing country but increased tax in home country
 - Tax incentives merely transfers tax revenues from poor countries to rich countries (UNCTAD 2000)

Revenue Transfer Argument Likely Overstated

- Many developed countries tax residents under a “territorial” approach
- Other tax systems provide for no “current taxation” of income from foreign operations until income is repatriated
- Multinational corporations can structure activities to minimize tax liability
 - Use of offshore entities
 - Transfer pricing arrangements

Continuum of Types of International Tax Regimes

Full exclusion of active and passive foreign source income

Full exclusion of active income

Taxation of income that is not taxed at a sufficient rate

Territorial tax systems-----**World-wide tax systems**

Provisions that facilitate base erosions and profit shifting

Deferral of active business income (but not passive income)

Full inclusion (no deferral on aggregate basis)

United States Tax Regime

- General rule: US taxes US multinationals on world-wide income
- Exception: No tax on active income of foreign subsidiaries until repatriated
- More complex model:
 - Structure investment in developing countries through other countries (a large percentage of foreign investment in Africa goes through Mauritius, Netherlands Antilles, or Switzerland)
 - Little repatriation of funds from investments in either developed or developing countries (about \$2 trillion in un-repatriated profits)
 - Blending of low-tax active income from developing countries with high-tax income from other countries

Possible Tax Reform in US May Influence the Economic Benefits of Tax Incentives to Investors

- Several proposals in the US eliminate deferral of active income of foreign subsidiaries and impose a “minimum” tax on foreign source income
- Politically “optimal” tax rate on foreign source income somewhere between zero and the regular corporate rate
- These changes may result in some economic benefits from tax incentives accruing to foreign governments rather than foreign investors

Possible Consequences of BEPS Project on Relative Tax Burdens

- Change relative tax burdens in countries for activities that qualify for tax incentives and those that do not
- Change relative tax burdens in doing business in developed and developing countries
- Provide additional tools to tax authorities in developing countries to better enforce their tax laws
 - “best practices” for limiting base erosion and profit shifting
 - increasing the quality (and hopefully, not just the quantity) of information available to tax authorities



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Taxation of Indirect Transfers of Assets

International Taxation: A Dialogue with Developing Countries

Washington DC: April 20, 2015

Overview



- Importance of the issue – big transactions, big money
- Is this about economics or politics?
- Direct and indirect transfers
- The indirect transfer problem
- If a country decides to tax, what are its options?
- Consider extractive industry taxation, but applicable more widely – especially to assets that are grants of exclusive rights by public authorities.

Big transactions



- International tax hits international agenda: G7/8, OECD/G20 BEPS Project
- Uganda: Tullow acquisition from Heritage (\$1.5 bn) - oil
- India: Vodafone acquisition from Hutchinson (\$11.1 bn) – telecommunications
- Issues of domestic tax law and bilateral tax treaties
- Very high profile because the issue involves public resources or rights in developing countries.
- Special challenge now that commodity prices have fallen and company takeovers become more frequent.

Economics or politics?



- Strong argument that efficiency in capital allocation requires ease of corporate reorganization
- If a resource right is paid for by bonus bidding or an efficient rent tax, is taxing gains on transfers a variety of double taxation? Understood to be exempt in Norway, subject to conditions
- BUT if the expected return to the host in tax and royalty is too low, may be an economic argument for taxing gains
- Recent events show that it's not politically tolerable to have large untaxed transactions in rights to a country's resources occurring
- Effective taxation of gains may be a shift in timing of receipts that addresses both economic and political concerns.



Direct and indirect transfers

- Direct transfer: transfer whole or part of right itself
- Indirect transfer: owner of entity holding the right may transfer interest in the entity



Direct Transfer

- Allocate consideration across tangible and intangible assets transferred, including mineral right itself – a significant part probably to the right itself
- Treatment of any gain on disposal of mineral right depends on interplay of:
 - Rules for taxing business income (or gains)
 - Depreciation recapture rules (and what is carried forward as a loss)
 - Any applicable Tax Treaty
- The amount included in the income of a transferor should be the consideration received - reduced by the undeducted cost of the transferred right
- The transferee is entitled to deduct the consideration paid for the right (there is a step up in cost) – rules differ on treatment of deduction
- What happens to intangible expenditure (drilling) if not deducted before production – treat as a notional asset with a loss equal to the available deduction

Farm Outs



- Bring in partner or particular expertise
- Transfer part of interest in return for work on original holder's behalf
- Immediate or when work commitments fulfilled
- Treatment of any cash amount
- Treatment of future work commitments – simplest is possibly to exclude from income and not treat as consideration for transfer

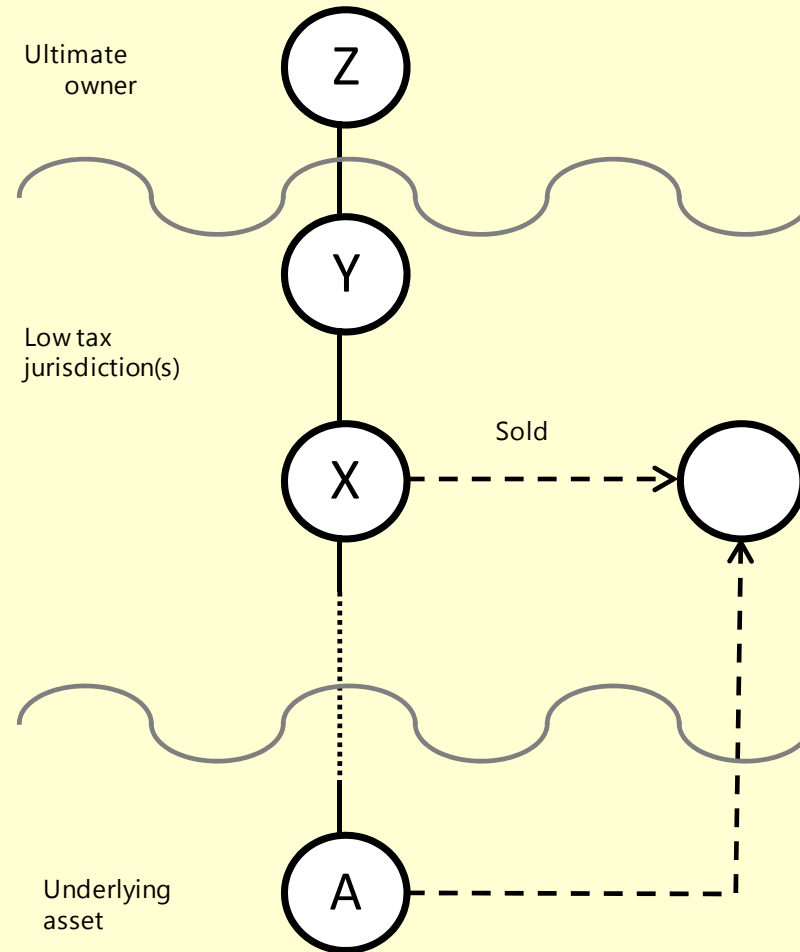


Indirect Transfers of Interest

- Shares (or venture interests) derive their value from assets held by the entity – may include mineral rights
- If direct transfers are taxed, non-taxation of indirect transfers creates a tax planning opportunity
- What is the source of the gain?
- Is the gain included in business income?
- If the gain is taxed what is the treatment of the premium paid?



Indirect Transfers of Interest





What can be done?

- Ensure a broad definition of real property, and the right to tax gains on transactions in companies that directly or indirectly hold real property in the host country
- Need specific reference to indirect transfers of interest to include mining and petroleum rights and information in the definition of immovable property for income tax purposes.
- Include a reporting mechanism under which the relevant Ministry informs the Revenue Authority of any substantial change in ownership of contractors or rights-holders.
- Deem the local entity to be agent of the non-resident for payment of the tax due in respect of an indirect transfer of interest.
- OR deem the local company to have made the transfer?
- Need to ensure that treaties do not over-rule.
- Some countries retain non-final withholding as a prepayment of the tax payable on the gain.



BEPS: ISSUES FOR TOOLKITS

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Deputy Director
Centre for Tax Policy and Administration

IMF Conference
A Dialogue with Developing Countries
Washington DC, 20th April 2015



Recommendations by G20 DWG

BEPS – an urgent Domestic Resource Mobilisation issue requiring a global dialogue

BEPS harms developing countries, which often rely heavily on tax revenues from the corporate sector

BEPS needs a global solution – one that works for poor countries as well as rich ones

Developing countries need to be engaged in the formulation of norms and rules to counter BEPS

Need for a more structured dialogue process



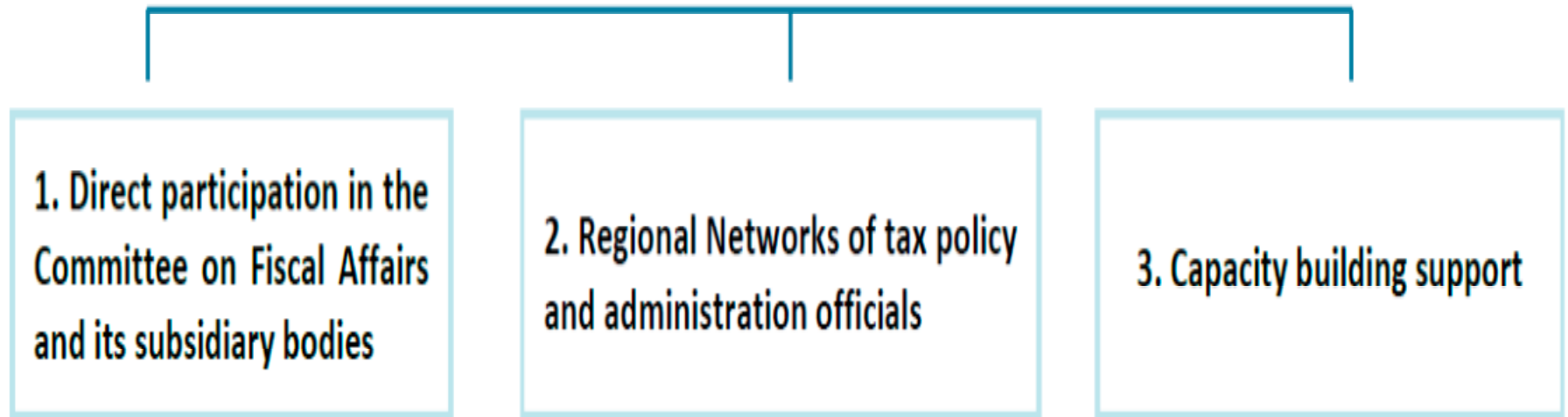
Identification of Developing Country Priorities

- Identification of **priorities** with technical **feedback** on proposals under discussion
- Informed a **2-part report for the G20 Development Working Group (DWG)** which looks specifically at BEPS in partner economies
- Input received through
 - Regional meetings
 - Regional and International (Tax) Organisations
 - Surveys
 - Bilateral contacts





Response: new structured dialogue process



Leaders of G20 Summit in Brisbane (November 2014):
'We welcome deeper engagement of developing countries in the BEPS project to address their concerns.'





Capacity Building: Toolkits

- Toolkits to assist developing countries in addressing different BEPS issues
 - Focus will be on **practical aspects** and implementation challenges
- Input gathered from developing countries to ensure toolkits meet their specific needs
 - During the development of all toolkits
 - Through Regional Meetings, Global Fora and other meetings
 - In close co-operation with the Regional and International Tax Organisations
- Input will also sought from business and NGOs
 - Through surveys and (other forms of) public consultation



Current work

1. **Option paper** for low-income countries on effective and efficient use of **tax incentives** for investment
Lead: IMF
2. **Report** on issues arising from the **indirect transfer of assets** to identify policy options to tackle abusive cases, with particular reference to developing countries
Co-lead: IMF and OECD Secretariat
3. **Practical toolkit** to assist developing countries address difficulties in **accessing comparables** data and approaches to apply accepted **principles in the absence of comparables**
Co-lead: WBG and OECD Secretariat



Output 1: Tax Incentives

- Classic tax policy challenge:
 - raise revenues to support key pillars of a business-enabling environment (such as infrastructure, human capital development, etc.)
 - attract investment by foregoing tax revenues by offering tax incentives
- With increased economic integration, international considerations become a central component of tax policy making
 - Pressure felt by policy-makers worldwide, to offer internationally-competitive tax environments to lure and boost investment

→ Draft Paper has been presented to the G20 DWG



Output 2: Indirect Transfers of Assets

- G20 Development Working Group mandate calls for ‘A report on the issues arising from the **indirect transfer of assets** to identify policy options to **tackle abusive cases**, with particular reference to **developing countries.**’
- Work on Indirect Transfers of Assets is in early stages
 - Co-leads (IMF/OECD) currently developing Terms of Reference
 - A Concept Note is being prepared, which will be developed into a final report due in March 2016
- Improving the **domestic framework** and **administrative assistance** will be key



Output 3: Toolkit on Comparability Data (1)

- G20 Development Working Group (DWG) Mandate
 - Lack of comparability data recognised as challenge in applying transfer pricing rules.
 - G20 DWG invited OECD and World Bank Group to develop a practical toolkit to address this issue.
 - Toolkit will be supplemented by OECD Secretariat study on feasibility of addressing information gaps on prices of natural minerals sold in an intermediate form, e.g. mineral concentrate.



Output 3: Toolkit on Comparability Data (2)

PROPOSED CONTENTS: 2-PRONG APPROACH

- **Part 1** - Assist developing countries address difficulties in accessing comparables data.
- Part 1 will, for example, include:
 - Description of role of comparable data in transfer pricing and problems for developing countries arising from non-existence of reliable data or from accessing data that exists
 - Description and analysis of how developing countries might expand the pool of data, improve access to existing data, and improve the capacity of tax officials to use data for transfer pricing purposes.
 - Model legislation and explanatory notes, where needed.
 - Supporting training materials.





Output 3: Toolkit on Comparability Data (3)

Part 2 - Assist developing countries in the use of approaches to apply internationally accepted principles in absence of comparables.

- Part 2 will, for example, include:
 - Overview and analysis of alternative approaches currently being used in practice that involve less reliance on the availability of comparables, such as:
 - **Safe harbours**
 - **Use of profit splits**
 - **Fixed margins**
 - **Internal rates of return; and**
 - **Use of alternative data sources.**
 - This will include country-based examples and considerations where appropriate, and discussion of advantages and disadvantages.





Output 3: Toolkit on Comparability Data (4)

- Consultations will take place with key stakeholders during the development of this toolkit
 - A country survey (currently outstanding - deadline 26 April)
 - A business survey (under development)
 - Written consultation and possible meetings on draft elements
- Consultations aim to:
 - identify any additional issues or options that should be included,
 - ensure the analysis in the toolkits is complete and balanced; and
 - draw out additional case studies that may be used to demonstrate best practices.





POST-2015 WORK ON TOOLKITS



Post-2015 Toolkits (1)

- Toolkit to support successful implementation of **transfer pricing documentation requirements**
 - **Effective** rules
 - Balancing **compliance imperatives** with **compliance costs**(Deadline: June 2016)

→ Also translating implementation guidance and Exchange of Information MoUs related to Action Item 13 (Country-by-Country reporting)



Post-2015 Toolkits (2)

- Toolkit to **strengthen tax treaty negotiations**
(Deadline: December 2016)
- May also focus on the policy aspects of whether to enter into a treaty



Post-2015 Toolkits (3)

- Toolkit to assist developing countries implement rules to address BEPS issues relating to **base eroding payments** between MNE affiliates
(Deadline: June 2017)
 - Covering payments such as interest, royalties, management and service fees
- This links to a number of BEPS outputs, including the work on interest deductibility, treaty abuse and transfer pricing.



Post-2015 Toolkits (4)

- Toolkit to assist developing countries implement rules to counter **artificial profit shifting** through **supply chain restructuring**
(Deadline: December 2017)
 - Focusing on a limited number of sectors, for example extractives industry, telecoms, and manufacturing
- This links to a number of BEPS outputs, in particular in the area of transfer pricing.



Post-2015 Toolkits (5)

- Toolkit to support the successful implementation by developing countries of **assessment of BEPS risks** (Deadline: December 2017)
- Focusing on a limited number of sectors, linking with the other toolkits



Questions and further information



Further information:
<http://www.oecd.org/ctp/beps.htm>

Check out the seven 2014 Deliverables:
<http://www.oecd.org/ctp/beps-2014-deliverables.htm>

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INTERNATIONAL TAXATION

A Dialogue with Developing Countries



Monday, April 20, 2015
8:30am to 1:00pm
IMF, HQ2 Conference Hall 2

A conference
hosted by



For an invitation, or information, call 202-623-6422,
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