ADB

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An evaluative framework for tax incentives in light of the Sustainable Development Goals (SDGs)”

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1. BEPS Action 5

- No specific reference was made to the word incentives in the content of BEPS Action 5.
- However, countries are also being reviewed in their tax incentives mainly in the requirement of substantial activity factors to no or only nominal tax jurisdictions.
- This has allowed the OECD and the OECD Forum on Harmful Tax Practices to review tax incentives (including free trade zones, reduction of corporate income tax rates).
- More than 200 tax regimes have been reviewed by the OECD. Some regimes have been placed under review and other harmful tax regimes have been abolished.

2. EU Standard of Good Tax Governance

EU introduced the concept of fair taxation, including elements to evaluate a tax regime by the EU Code of Conduct Group.

(1) whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents,

(2) whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base,

(3) whether advantages are granted even without any real economic activity and substantial economic presence within the third country offering such tax advantages,

2. EU Standard of Good Tax Governance

4) whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD
5) whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

If the tax regime is considered having harmful tax measures in the area of business taxation, the country is required to change the regime, otherwise, the country can be included in the list of non-cooperative jurisdictions.

3. EU Standard of Good Tax Governance and GloBE

Resolution Parliament December 2019:

- *Welcomes the GloBE proposal, which aims at ensuring that a minimum level of tax is paid where value is being created and where economic activity is taking place; considers that the ultimate aim of the Pillar Two measures should be to address remaining BEPS issues while preventing damaging tax competition, notably by* ***reducing pressures to grant unjustified tax incentives without any positive economic impact,*** *on top of existing measures aimed at tackling tax evasion, aggressive tax planning and tax avoidance;*

- *Recommends that all of the harmful tax practices contained in BEPS Action 5 are covered by the GloBE proposal*

Fair taxation in a digitalised and globalised economy - BEPS 2.0. P9_TA(2019)0102

See also Summary discussions Pillar 2 at EU Platform for Tax Good Governance (8 December 2021).

4. Tax Incentives in developing countries after BEPS

- What type of incentives after BEPS?
- What could be an Evaluative Framework for tax incentives?

Additional questions

- Same approach OECD BEPS and EU Code of Conduct Group?
- Legal certainty for taxpayer in case that country decides to change their tax incentives?
- How attracting investment by means of tax incentives can contribute to SDGs?

4.1. What type of incentives after BEPS?

2015 Toolkit on Tax Incentives for Low-Income Countries

Recommendations:

National level: Improve the design of tax incentives (for example by placing greater emphasis on cost-based incentives rather than profit-based ones; and by targeting tax incentives better),strengthen their governance (for instance through more transparency, better tax laws and a stronger role of the Minister of Finance) and by undertaking more systematic evaluations.

International level: countries may gain by coordinating their tax incentive policies regionally, so as to mitigate the negative spill overs from tax competition

2018: UN-CIAT Design and Assessment of Tax Incentives in Developing Countries

Tax incentives cannot compensate for the deficiencies in the design of the tax system or inadequate physical, financial, legal or institutional infrastructure.

Checklist for drafting tax incentives legislation. List of things to be considered to maximise clarity and administration. Consistency of legal drafting with the policy underlying the tax incentive.

4.2. Evaluative Framework

- **Systematic review** of tax incentives. This review should focus on whether the tax incentive has achieved the specific goals in terms of effectiveness and efficiency;
- Clear **target and eligibility criteria** for granting the incentive, to be measured in light of the social and economic development of the region/sector/country;
- Tax incentives should be **transparent**, and the granting of the tax incentive should **not be discretionary**. To achieve greater accountability and transparency of tax incentives, it is important that the general **tax expenditure of the country is periodically analysed and tax budgets are implemented** (UN-CIAT 2018:19).Efforts should be made by international organizations to train staff and use data analytics to carry out this analysis in developing countries.

For instance the OECD regional Revenue Statistics including the one for the Asia and Pacific Region refers to the need to include the reporting in the revenue side and the expenditure side OECD (2019), Revenue Statistics in Asian and Pacific Economies 2019, OECD Publishing, Paris, https://doi.org/10.1787/b614e035-en.

4.2. Evaluative Framework

- The tax incentive should **have a fiscal budget and perhaps also a ceiling in the budget** so that once reached the ceiling of revenue loss, the tax incentive will be terminated.
- The **institutional conditions** for these incentives should be also taken into account mainly
  - Developing countries should appoint one person, typically the Ministry of Finance **to administer and monitor** the tax incentives;
  - Developing countries **should prevent the use of several laws** (investment, tax, other) to regulate tax incentives. Furthermore, to **enhance transparency, legislation regulating tax incentives should be publicly available with a specific reference in English** (to the incentive, the tax benefit and the criteria used to systematically evaluate the tax incentive);

4.2. Evaluative Framework

- The use of **one stop shop agencies should be encouraged**, since investors may find it useful to access the information, but also dealing with all permits/licenses, and further questions regarding their investment. This agency should have a code of conduct to guide their activities within the agency, and in addition a list of sanctions (administrative fine or imprisonment) should be introduced. In case that there is any corruption or bribery, the sanction for the respective agency official should be made publicly available.

See MOSQUERA VALDERRAMA I.J. (WITH BALHAROVA M.). Tax Incentives in Developing Countries: A Case Study: Singapore and Philippines, Eds. (Mosquera Valderrama I.J, Lesage, D. and Lips W.) United Nations University Series on regionalism. Springer Publications

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