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Addressing Developing Countries' Tax Challenges of the Digitalization of the Economy

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Introduction

There is a global consensus that the existing international tax rules and standards are not adequate to fairly allocate taxing rights and income among countries, prevent tax base-eroding transactions carried by multinationals, and fight harmful tax competition among countries. The digitalization of the economy has escalated these problems, and even developed countries are not able to collect taxes on the profits of some multinationals anymore.[1] Thus, countries are seeking to reform the international legal tax system focusing on the corporate taxation standards and the tax challenges arising from the digitalization of the economy.

The ongoing international taxation legal system reform process was triggered by the Group of Twenty (G20) with the announcement of the Organisation for Economic Co-operation and Development (OECD)'s mandate to lead the Base Erosion and Profit Shifting Project (BEPS).[2] The BEPS Project sought to identify and propose tax policies to strengthen the international taxation system and fight against aggressive tax planning. The BEPS Project included a set of 15 Action Plans intended to issue reports on differ-

Abstract

This Policy Brief sheds light on some of the implications for developing countries concerning the new international taxation global governance structure and the ongoing corporate tax reform process under the Organisation for Economic Co-operation and Development and the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) Project umbrella in the context of the digitalization of the economy. The objective is to inform developing country tax authorities on the issues that may require further South-South cooperation and action to protect taxing rights that are of vital importance for the achievement of the Sustainable Development Goals. Firstly, the new international collaborative mechanisms created after the BEPS Project - the Platform for Collaboration on Tax and the Inclusive Framework on BEPS – are described. Secondly, the international tax reform proposals under negotiations in the Inclusive Framework on BEPS are outlined. The final remarks will address the challenges for developing countries to participate in the ongoing international tax reform effectively.

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La présente note de synthèse met en lumière certaines des conséquences qui pourraient résulter pour les pays en développement de la nouvelle structure de gouvernance mondiale en matière de fiscalité internationale et du processus de réforme en cours concernant l'imposition de l'économie numérique dans le cadre du projet de Cadre inclusif sur l'érosion de la base d'imposition et le transfert de bénéfices (BEPS) de l'Organisation de coopération et de développement économiques. L'objectif est d'informer les autorités fiscales des pays en développement sur les questions qui peuvent nécessiter une coopération Sud-Sud plus approfondie et des actions qui doivent être entreprises pour protéger les droits fiscaux qui sont d'une importance vitale pour la réalisation des objectifs du développement durable. Elle fournit une description des nouveaux mécanismes de collaboration internationale créés dans le cadre du projet BEPS que sont la plate-forme de collaboration sur les questions fiscales et le Cadre inclusif et dresse un état des lieux des propositions de réforme en matière de fiscalité internationale qui sont en cours de discussion au sein du Cadre inclusif sur l'érosion de la base d'imposition et le transfert de bénéfices et des défis qui doivent être relever par les pays en développement afin de participer efficacement à la réforme en cours de la fiscalité internationale.

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Este Informe sobre Política arroja luz sobre algunas de las implicaciones para los países en desarrollo en relación con la nueva estructura de gobernanza mundial sobre impuestos internacionales y el proceso que se encuentra en curso sobre reforma impositiva respecto de las sociedades en el marco de la Organización para la Cooperación y el Desarrollo Económico y el Marco Inclusivo sobre Erosión de la Base Imponible y el Traslado de Beneficios (BEPS , por sus siglas en inglés), Proyecto paraguas en el contexto de la digitalización de la economía. El objetivo es informar a las autoridades fiscales de los países en desarrollo sobre las cuestiones que pueden requerir una mayor cooperación por parte de Sur-Sur y la toma de medidas para proteger los derechos tributarios que son de vital importancia para el logro de los Objetivos de Desarrollo Sostenible. En primer lugar, se describen los nuevos mecanismos de colaboración internacional creados después del Proyecto BEPS – la Plataforma de Colaboración en Impuestos y el Marco Inclusivo sobre BEPS. En segundo lugar, se esbozan las propuestas de reforma fiscal internacional en el Marco Inclusivo sobre BEPS. Las observaciones finales abordarán los desafíos que enfrentarán los países en desarrollo para participar de manera efectiva en la reforma fiscal internacional en curso.

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ent tax issues such as harmful tax competition, transfer pricing, and hybrid mismatches.

The outcome of the BEPS project was an agreement on four minimum standards which included BEPS Action 5 on "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance", BEPS Action 6 on "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances", BEPS Action 13 on "Transfer Pricing Documentation and Country-by-Country Reporting", and BEPS 14 on "Making Dispute Resolution Mechanisms More Effective".

Due to the strong digitalization of the economy, the report on BEPS 1 Action "Addressing the Tax Challenges of the Digital Economy"[3] - which was not considered as one of the minimum agreed standards - has become the starting point for a major corporate tax reform debate and negotiations, including the discussion of new rules for allocating taxing rights and income, and global anti-erosion measures. The BEPS Action 1 Report concluded that the establishment of a ring-fenced set of rules designed for the digital economy would not be desirable and proposed a more holistic and broader reform of the corporate tax system. Thus, the Members of the Inclusive Framework on BEPS agreed to negotiate new rules under the BEPS 1 Action work.[4]

Additionally, the BEPS project introduced not only a new set of international taxation standards but also the new international taxation global governance architecture with the creation of two new international collaborative mechanisms: the Inclusive Framework on BEPS and the Platform for Collaboration on Tax.

The present Policy Brief sheds light on some of the implications for developing countries concerning the new international taxation global governance structure and the ongoing corporate tax reform process under the OECD and the Inclusive Framework on BEPS umbrella in the context of the digitalization of the economy. The objective is to inform developing country tax authorities on the issues that may require further South-South cooperation and action to protect taxing rights that are of vital importance for the achievement of the Sustainable Development Goals. Firstly, the new international collaborative mechanisms created after the BEPS Project - the Platform for Collaboration on Tax and the Inclusive Framework on BEPS – are described. Secondly, the international tax reform proposals under negotiations in the Inclusive Framework on BEPS are outlined. The final remarks will address the challenges for developing countries to participate in the ongoing international tax reform effectively.

Post-BEPS International Taxation Global Governance Architecture

Since the release of BEPS Project reports, the international tax global governance has changed, as noted, with the establishment of two distinct international collaborative mechanisms: the Platform for Collaboration on Tax[5] and the Inclusive Framework on BEPS[6].

The Platform for Collaboration on Tax (PCT) is a joint effort from the United Nations (UN), OECD, the World Bank and the the International Monetary Fund (IMF) to enhance cooperation among the participating organizations and countries towards the development of a common approach to deliver joint outputs and responding to requests for global dialogue on tax matters.[7]

The PCT should provide a transparent framework for producing joint outputs covering domestic and international tax matters, strengthening dynamic interactions between standard setting, capacity building and technical assistance, and systematic sharing of information on activities both at the international and domestic level.[8] By agreement, the PCT participants may act within their own mandates and within their own rules of procedures. For that reason, although the Platform will seek consensus among the participants, different views may be reflected in the outputs where consensus cannot be found.

The PCT mandate includes the development of appropriate tools for developing countries in respect of the taxation of multinationals support to interested developing countries to participate in the implementation of the BEPS package and to input into future global standard setting on international taxation, implementing capacity development tools, improving awareness to build comprehensive and effective exchange of information mechanisms, producing outputs on taxation and the "informal economy", and promoting information sharing and coordination among Members.[9]

On March 2019, the PCT launched the First Global Conference on the Platform for Collaboration on Tax Report.[10] The Conference Statement reinforced the participants' coordinated joint action to "facilitate feedback between standard setting, capacity building and technical assistance in the sphere of international tax".[11] Moreover, the PCT participants agreed on Platform Actions to Take the Tax Agenda Forward which includes items such as the provision of coherent and consistent international tax policy advice, the support for developing countries to address tax transparency and base erosion and profit shifting, the support for accessing knowledge, experience and good practices in tax administration working with the Forum on Tax Administration, regional organizations and other stakeholders.[12]

The second new mechanism, the Inclusive Framework on BEPS (IF), was created in 2016 by the OECD Committee on Fiscal Affairs (CFA) and was opened for the participation of interested countries and tax jurisdictions for implementing the BEPS package on a consistent and global basis.[13]

The Inclusive Framework on BEPS mandate includes the development of standards for remaining BEPS issues, review of the implementation of the BEPS minimum standards and other BEPS issues, and facilitation of the implementation process of the Members by providing guidance and supporting the development of toolkits for

low-capacity developing Members. To join the Inclusive Framework, interested countries and tax jurisdictions are required to commit to the BEPS package and its consistent implementation. All members participate in the decision-making body on an equal footing basis.[14]

The PCT Concept Note described the "links and synergies" between the PCT and IF. The PCT should develop the eight tool kits aiming to "translate the complexity of BEPS outcomes … into user-friendly guidance for low capacity countries" or other "international tax issues not included in the BEPS project" such as indirect transfer of assets (ITAs).[15]

Ongoing Corporate Tax Reform Process

The digitalization of income is such a pervasive process that a Task Force on the Digital Economy (TFDE) was created in 2013 to develop a report on the tax challenges raised by the digital economy and the tax policies and measures to address them. In 2014, an interim report[16] was published, while the final report[17]on the BEPS framework was released in 2015. The work of the TFDE continued with the publication of an Interim Report in 2018,[18] followed by a Policy Note on Tax and Digitalisation,[19] a Policy Note on the Tax Challenges of the Digitalisation of the Economy,[20] and a Public Consultation Document Addressing the Tax Challenges of the Digitalisation of the Economy.[21]

In 2015, the BEPS Action 1 Addressing the Tax Challenges of the Digitalisation of the Economy Report was launched.[22] The report concluded that it would be impossible to ring-fence the digital economy from the rest of the economy because the digital economy was "increasingly becoming the economy itself". The report considered e-commerce, app stores, cloud computing, digital platforms, and online payment services as types of digital business models. Further, the report stated that, although the digital economy and its business models do not generate distinctive BEPS issues, it would exacerbate BEPS risks.

The BEPS Action 1 Report discussed some options to address the tax challenges of the digital economy such as a new nexus in the form of significant economic presence, a withholding tax on certain types of digital transactions, and an equalization levy that could be implemented unilaterally provided they respected treaty obligations.

In 2018, a follow-up on the BEPS Action 1 Report was published - the Addressing the Tax Challenges of the Digitalisation of the Economy Interim Report[23] - under the Inclusive Framework on BEPS umbrella. According to the Interim Report, participants of the IF have agreed to review the current rules on the allocation of taxing rights and income and look for a consensus-based solution to be reached by 2020. The participants also agreed on delivering an update on the digital economy taxation work in 2019 as a milestone to the 2020 solution.

Addressing the Tax Challenges of the Digitalisation of the Economy Policy Note

In January 2019, the Inclusive Framework on BEPS approved the "Addressing the Tax Challenges of the Digitalisation of the Economy Policy Note".[24] The document laid the ground for an agreement on the way forward after the BEPS Action 1 Report and the Tax Challenges Arising from the Digitalisation of the Economy Interim Report 2018.

First, the document restated that the digital economy would not be ring-fenced from other economic sectors, and the proposals should be discussed on a "without prejudice" basis.[25]

The proposals were divided in two pillars: the first pillar would focus on the allocation of taxing rights through revised profit allocation rules and revised nexus rules, and the second pillar would address the remaining BEPS or anti-BEPS rules.

The Inclusive Framework agreed to discuss the proposals on a "without prejudice" basis and would be "driven by finding the right balance between accuracy and simplicity".[26]

Under the first pillar, the Inclusive Framework recognized that "these proposals would lead to solutions that go beyond the arm's length principle", and "the limitations on taxing rights determined by reference to a physical presence" by exploring new thresholds such as the "significant economic presence".[27] Thus, the Policy Note recognized that well-established and "untouchable" principles of international taxation were on the negotiation table. Under the second pillar, the Inclusive Framework agreed to discuss anti-erosion measures "through the development of two inter-related rules: income inclusion rules, and a tax on base eroding payments". Both rules would be conditioned by the imposition of a low effective tax rate or no tax to profits.[28]

The Inclusive Framework participants also recognized the risk of un-coordinated unilateral actions in the absence of a multilateral framework and agreed that the new rules should not result in either taxation when there is no economic profit or in double taxation.[29]

Public Consultation Document Addressing the Tax Challenges of the Digitalisation of the Economy

In February 2019, the Inclusive Framework on BEPS released its "Public Consultation Document Addressing the Tax Challenges of the Digitalisation of the Economy". The Public Consultation Document detailed the proposals for both Pillars I and II described in the Policy Note. The document received a high number of comments by international organizations, civil society, academics, and practitioners.[30]

First Pillar: Allocation of Taxing Rights and Income

The allocation of taxing rights and income in the international legal system is predominantly residence-based with

some exceptions for source-based allocation such as the rules on the payment of royalties that allocate taxing rights to the source (Article 12 of the OECD Model Convention). Before the digitalization of the economy, the physical presence of companies, either by the incorporation of a business entity or through a branch, was an important factor for allocating taxing rights and income among tax jurisdictions, and "permanent establishment" was the golden allocation standard for tax jurisdictions other than that of the company's residence. However, the digitalization of the economy has made it possible for companies to earn income in tax jurisdictions without having any physical presence in the market. Hence, rules for the allocation of taxing rights and income that are not based solely on companies' residence or physical presence should be negotiated by the participants of the IF. The international tax system must move forward and establish taxing rights and income allocation rules to promote the growth of the digital economy while guaranteeing the proper collection of revenue for tax jurisdictions where digital businesses are deriving income.

The Public Consultation Document Addressing the Tax Challenges of the Digitalisation of the Economy describes three proposals for allocating taxing rights: "user participation", "marketing intangibles", and "significant economic presence".

"User Participation"

The "user participation" proposal is based on the value created by users for some highly digitalized companies from the behavior of engaged and active users sharing their personal data and interacting with other users. The users' active participation is critical for the brand creation and the generation of valuable data that will determine the company's market power. Social media platforms, search engines, and online marketplaces are the kind of businesses contemplated by this proposal. In this case, the nexus rules would be revised "so that the user jurisdictions would have the right to tax the additional profit allocable to them",[31] and the profit allocation rules would "accommodate the value creating activities of an active and engaged user base."[32] The allocation of taxing rights and income rules would be applicable regardless of the company's local physical presence. The non-routine or residual profit split methods for transfer pricing would be used instead of the arm's length principle. The formula for allocating profits would "approximate the value of users, and users of each country, to a business".[33] This proposal would change the current allocation rules from residence to user's market jurisdiction.

"Marketing Intangibles"

The second proposal for allocation of taxing rights and income is based on "marketing intangibles" that include "customer lists, customer relationships, and proprietary market and customer data that is used or aids in marketing and selling goods or services to customers".[34] The "marketing intangible" proposal would apply to companies that could reach a jurisdiction, either without physical presence or through limited physical presence, to develop a user or consumer base and other marketing intangibles in that jurisdiction. According to this proposal, non-routine or residual income derived from "marketing intangibles" and their associated risks would be taxed by the market jurisdiction, and the applicable rules on the tax on all other income would be based on the existing transfer pricing rules.[35]

"Significant Economic Presence"

In the case of the "significant economic presence" proposal, the allocation of taxing rights would be based on factors that "evidence a purposeful and sustained interaction with the jurisdiction via digital technology and other automated means". The determination of the "significant economic presence" would be based on the following factors: "(1) the existence of a user base and the associated data input; (2) the volume of digital content derived from the jurisdiction; (3) billing and collection in local currency or with a local form of payment; (4) the maintenance of a website in a local language; (5) responsibility for the final delivery of goods to customers or the provision by the enterprise of other support services such as after-sales service or repairs and maintenance; or (6) sustained marketing and sales promotion activities, either online or otherwise, to attract customers".[36]

The allocation of income could be based on a fractional apportionment method. As described in the Public Consultation Document,[37] the "fractional apportionment" would be determined by a mechanism of three successive steps: first, the definition of the tax base to be divided; second, the determination of the allocation keys to divide that tax base; and, third, the weighting of these allocation keys. The proposed allocation keys would be sales, assets, and employees with the addition of users for those businesses for which they "meaningfully contribute to the value creation process". The "user participation" allocation key should not be the simple counting of users per jurisdiction because users may create multiple profiles[38] and use Virtual Private Networks (VPNs) to access digital platforms, for example. The variable "user participation" should be balanced with other factors, such as "prospective users in the market", to assure the expansion of the benefits of the digitalization of the economy for those who are at the margins of the process by promoting digital inclusion policies.

"Without Prejudice": The Arm's Length Principle

The arm's length principle for allocating income relating to intra-company transactions was introduced in the international taxation legal system in the League of Nations Model of 1935. Both the UN and the OECD Tax Treaty Models have followed the arm's length (AL) principle.

Even if on a "without prejudice" basis, the Public Consultation Document's approach is undoubtedly a turning point in the international taxation debate, especially regarding the "arm's length" principle. The "significant eco-

nomic presence" proposal would be a departure from the AL standard by embracing the "fractional apportionment" method.

The "arm's length" rules are complex, costly and often inaccurate, mainly regarding intangibles valuation. In fact, "arm's length" is a fiction for a fiction – it is a fictional basis for determining the market value of intra-company transactions by considering the fiction that all the entities that are part of a multinational enterprise (MNE) are real and separate companies seeking profits *per se* independently from a global business strategy dictated by the parent company. The MNEs incorporate entities in multiple countries for a variety of reasons: domestic incorporation may be a condition for investing in the country or reducing tax liability, among others. Nonetheless, the ultimate goal is to maximize the MNE's global profits, and all business strategies are designed as if for a single company, even if at the expense of one or more of the related incorporated entities. In that context, the "arm's length" complex set of rules is a fiction that conveys the idea that all the parts of a MNE are entities in the quest for profits for themselves alone. The growing number of intra-company transactions, including intangibles, have made the "fiction for a fiction" more inaccurate and complex. The uncertainties and complexities of the "arm's length" standard led to the adoption of Advance Pricing Agreements (APAs) that have been proven, by the exposure of the Luxembourg's APA practices, to have been strategically used to erode tax bases abroad.[39] So, the promise of accuracy and certainty is no longer a valid argument against adopting fractional apportionment as contemplated in the "significant economic presence" proposal.

Second Pillar: Global Anti-base Erosion Proposal

In the context of the BEPS Project, the recommendation of anti-base erosion measures is a natural outcome. According to the Public Consultation Document, the proposal for anti-base erosion measures "is intended to respect the sovereign right of each jurisdiction to set its own tax rates, but reinforces tax sovereignty to "tax back" profits where the countries have not sufficiently exercised their primary tax rights".[40] The proposal considers the development of two inter-related rules: an income inclusion rule and a tax on base eroding payments. An income inclusion would "tax the income of a foreign branch or controlled entity if that income was subject to a low effective tax rate in the jurisdiction of establishment or residence. Meanwhile, a tax on base erosion payments would "deny a deduction or treaty relief for certain payments unless that payment was subject to an effective tax rate at or above a minimum rate".[41] The key concept for the imposition of both measures is "effective tax rate".

This proposal was introduced by Germany and France, and subsequently supported by the Netherlands, and was influenced by the U.S. Tax Cuts and Jobs Act (TCJA) of 2017[42]. The U.S. TCJA 2017 introduced anti-base erosion measures such as the Base Erosion and Anti-abuse Tax (BEAT)[43] and the Global Intangible Low-Taxed Income (GILTI)[44].

The BEAT[45], an eroding payment tax, is an additional minimum tax that hits large U.S. companies that make deductible payments, such as royalties, for foreign subsidiaries located in low-tax jurisdictions. For the BEAT, the base erosion and the tax avoidance are assessed by calculating the regular U.S. tax and recalculating the tax at a lower BEAT rate but adding the deductible payments. The company must pay the regular U.S. tax plus the amount of the BEAT in excess of the regular U.S. tax.

The GILTI[46], an income inclusion measure, is the allocation of income earned by foreign subsidiaries to the parent company. The GILTI is included in the gross income annually and amounts to the total active income earned by the foreign controlled company that exceeds 10% of the company's depreciable tangible property.

The imposition of the U.S. anti-base erosion measures are not dependent on the calculation of the effective tax rate of the foreign tax jurisdiction where the payments are made to or the intangible income is sourced. Rather, they are imposed based on the regular U.S. tax liability. Both measures are applicable whether or not the affiliated company is located in a low-tax jurisdiction. Thus, the effective tax rate of the foreign tax jurisdiction is irrelevant.

For the Public Consultation Document proposal, the imposition of both a tax on base-eroding payments or an inclusion of income would be subject to "low effective tax rate" criteria. The calculation of the effective tax rate is not a simple issue.

Concerning the adoption of global anti-base erosion measures, attention should be given to the complexity of such measures. In the U.S. the implementation of the BEAT and the GILTI has required the issuance of multiple tax regulations that were insufficient to eliminate all taxpayers' uncertainties. Additionally, the imposition of those levies demanded a massive investment on information technology by the Internal Revenue Service (IRS) that will reach US$ 11.4 billion in 2019.[47] Moreover, the U.S. IRS Large Businesses and International (LB&I) division will hire between 400-500 employees to boost the LB&I team that has already 4,400 officials.[48] For the reasons above, the imposition of such levies would largely be too costly for developing countries to undertake due to their budgetary limitations. Consequently, the proposal as designed would promote tax revenue concentration in favor of jurisdictions with greater investment and enforcement capabilities – i.e. mostly developed countries.

Another point to be debated is the potential tax disputes that could arise from the imposition of unilateral anti-base erosion measures without any multilateral mechanism to assess the "effective tax rate" in each country. The U.S. experience demonstrates that without a global consensus, those measures will count "effective tax rate" as the nominal tax rate of the imposing tax jurisdiction. So, the "effective tax rate" calculation should be carefully designed to consider all the tax measures that reduce the taxpayers' tax liability such as deferrals and tax breaks.

Furthermore, the conditions for the imposition of the anti-base erosion measures should be negotiated to guarantee that countries should only be able to impose such measures when in compliance with the global agreed minimum tax rate and in a non-arbitrary way to avoid abuses or targeted defensive measures.

G-24 Submission

The Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24) submission to the Public Consultation Document Addressing the Tax Challenges to the Digitalisation of the Economy emphasized that the current nexus rules based on physical presence "are becoming increasingly redundant and impracticable."[49] Thus, the need for revision of the allocation of taxing rights and income should be oriented by the "growth of new and challenging business models and their characteristics", and that only "just and fair allocation of taxing rights to relevant States" regarding multinationals' transactions, and the avoidance of double taxation should keep the virtuous cycle of demand and supply spreading in different tax jurisdictions.[50] The proposal of "significant economic presence" based on revenue combined with other factors such as number of users would be compatible with the digital permanent establishment concept.

Moreover, the G-24 considered it "essential to take both demand and supply side factors into account in any measure aimed at allocation of profits. Considering the differences between Article 7 of the OECD Model and the UN Model - the first allowing for the allocation of profits by the profit split method with appropriate modifications for the digital economy, and the second providing for the use of the fractional apportionment method - the "acceptance of such flexibility" would increase the likelihood of a broad consensus. Furthermore, the G-24 submission considered the adoption of a withholding tax using sales as a proxy would be a mechanism enabling this proposal to be "easier to administer" and a "key to achieving legal certainty and simplicity for enterprises." The implementation of such combined mechanism of fractional apportionment with withholding taxes would also provide valuable information for tax administration by the tax return filing for recovering any withholding excess.[51]

The G-24 proposal did not consider the Pillar II – Global Anti-base Erosion - proposal "as a solution to broader tax challenges posed by the digitalisation of the economy", and as a substitute to the revision of the rules for allocation of taxing rights and income.[52]

Final Remarks

The international taxation governance architecture has changed since the release of the BEPS reports. Some developments are relevant to developing countries, although the challenges of having an effective and inclusive global tax system have not yet been overcome.

The two new international mechanisms created to support or monitor the BEPS implementation are not intergovernmental organizations. The Inclusive Framework on BEPS administrative work is still conducted by the OECD Secretariat, and PCT is a joint venture of international intergovernmental organizations.

Although the Inclusive Framework on BEPS deliberates by consensus, the short timeline for deliberations and the complexity of the issues under negotiation would require intensive prior preparations on the part of participants, which would make it difficult for the idea of participation "on equal footing" for all participants to become a reality rather than merely rhetorical. This is because due to institutional capacity constraints, many developing country participants may often lack the necessary technical support and institutional knowledge needed to enable them to participate effectively in the IF proceedings.

Moreover, IF decisions have the potential to establish "international standards", "recommendations" or even "guidelines" applicable globally and not just to IF participants because powerful mechanisms for compliance are already in place such as the International Finance Corporation (IFC)/Multilateral Investment Guarantee Agency (MIGA) Policy on the Use of Offshore Financial Centres in World Bank Group Private Sector Operations (The OFC Policy)[53] that outlines IFC's policy in ensuring that their private sector operations are not used for tax evasion. In 2016, the IFC and the MIGA presented an update on tax issues and the OFC Policy that requires "project companies to covenant that they will comply with applicable law", including "tax laws as they might change from time to time, including changes arising from the Base Erosion and Profit Shifting (BEPS) initiative of the Organisation for Economic Cooperation and Development (OECD) and other tax reform".[54] The establishment of the PCT, whose mandate includes the cooperation among the Members (IMF, OECD, World Bank, and UN) to join efforts for the BEPS outcomes implementation, may introduce broader and stronger compliance strategies similar to the OFC Policy mentioned above.

For the reasons above, developing countries should engage in intensive capacity building, preparatory work, and coordination efforts to actively and effectively negotiate tax rules and standards that conform to their needs and interests. Tax peer exchange events and tax administration fora are relevant initiatives to promote coordination, cooperation, and information sharing among developing countries.

Endnotes:

[1] See https://www.nytimes.com/2019/04/29/us/politics/democrats-taxes-2020.html (last access 30/04/2019).

[2] See http://www.oecd.org/tax/oecd-urges-stronger-international-co-operation-on-corporate-tax.htm, (last access 09/05/2019); The G20 Leaders Declaration in Los Cabos, available at https://www.oecd.org/g20/summits/los-cabos/2012-0619-loscabos.pdf (last access 10/05/2019).

[3] OECD, *Addressing the Tax Challenges of the Digital Economy, Ac-*

tion 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project (Paris, OECD Publishing, 2015). Available from https://doi.org/10.1787/9789264241046-en (accessed on 1 May 2019).

[4] Ibid., p. 54.

[5] See http://www.oecd.org/ctp/concept-note-platform-for-collaboration-on-tax.pdf (last access 30/04/2019).

[6] See http://www.oecd.org/tax/beps/background-brief-inclusive-framework-for-beps-implementation.pdf (last access 18/04/2019).

[7] For a detailed analysis about the Platform for Collaboration on Tax, see Manuel F. Montes and Pooja Rangaprasad, "Collaboration or Co-optation? A review of the Platform for Collaboration on Tax", South Centre Policy Brief 48 (June 2018), available at https://www.southcentre.int/wp-content/uploads/2018/06/PB48_Collaboration-or-Co-optation-A-review-of-the-Platform-for-Collaboration-on-Tax_EN.pdf (last access 21/05/2019).

[8] See http://www.oecd.org/ctp/concept-note-platform-for-collaboration-on-tax.pdf (last access 30/04/2019).

[9] Ibid.

[10] Available at http://documents.worldbank.org/curated/en/860581538762337418/pdf/130559-WP-ReportFinalMar.pdf (last access 01/05/2019).

[11] Ibid., p. 64.

[12] Ibid., p. 66.

[13] The G20 leaders called on the OECD for the development of a framework that would be open to all interested countries and jurisdictions, including developing countries, in the Summit in Antalya on 2015. See http://g20.org.tr/g20-leaders-commenced-the-antalya-summit/ (last access 18/04/2019).

[14] See http://www.oecd.org/tax/beps/background-brief-inclusive-framework-for-beps-implementation.pdf.

[15] See http://www.oecd.org/ctp/concept-note-platform-for-collaboration-on-tax.pdf (p. 4, last access 30/04/2019).

[16] See http://www.oecd.org/ctp/addressing-the-tax-challenges-of-the-digital-economy-9789264218789-en.htm (last access 18/04/2019).

[17] See http://www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm (last access 18/04/2019).

[18] See http://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm (last access 18/04/2019).

[19] See http://www.oecd.org/tax/beps/tax-and-digitalisation.pdf (last access 18/04/2019).

[20] See http://www.oecd.org/tax/beps/international-community-makes-important-progress-on-the-tax-challenges-of-digitalisation.htm (last access 18/04/2019).

[21] See http://www.oecd.org/tax/beps/public-consultation-tax-challenges-of-digitalisation-13-14-march-2019.htm (last access 18/04/2019).

[22] See http://www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm (last access 18/04/2019).

[23] See http://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm (last access 18/04/2019).

[24] Available at http://www.oecd.org/tax/beps/international-community-makes-important-progress-on-the-tax-challenges-of-digitalisation.htm (last access 08/04/2019).

[25] Ibid., p. 1. The "without prejudice" basis refers to the possibility of changing the existing rules and standards such as the "arm's length" principle.

[26] Ibid., p. 2.

[27] Ibid.

[28] Ibid.

[29] Ibid., p. 3.

[30] The public comments are available at http://www.oecd.org/tax/beps/public-comments-received-on-the-possible-solutions-to-the-tax-challenges-of-digitalisation.htm (last access 08/04/2019).

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[33] Ibid.

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[41] Public Consultation Document, p. 25.

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[43] I.R.S. § 59A.

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[45] A brief explanation about the BEAT is available at https://www.taxpolicycenter.org/briefing-book/what-tcja-base-erosion-and-anti-abuse-tax-and-how-does-it-work (last access 10/04/2019).

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