Implemented by

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Conducted by

IBFD

Base Erosion and Profit Shifting Assessment Tool (B.A.T.)

Report

Uganda

2023

Published by:
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn

Friedrich-Ebert-Allee 36
53113 Bonn
Germany

E public-finance@giz.de
I www.giz.de

Programme
Sector Programme Good Financial Governance.

Authors: Vanessa Arruda Ferreira, Jan de Goede (project supervisor), Carlos Gutiérrez P. (project leader), Francesco de Lillo, Yvette Nakibuule Wakabi and Birhanu Tadesse Daba.

URL links:
Responsibility for the content of external websites linked in this publication always lies with their respective publishers. GIZ expressly dissociates itself from such content.

On behalf of
German Federal Ministry for Economic Cooperation and Development (BMZ)

The publication is supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Sector Project Good Financial Governance, on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ). The contents of this publication do not represent the official position of either BMZ or GIZ.

Bonn, 2023

© 2024 IBFD

This report documents the results of the B.A.T. assessment conducted in Uganda in 2023. This assessment aims to (i) evaluate the country tax system's strengths and weaknesses concerning the combat against international tax avoidance through BEPS; (ii) identify possible measures to deal with BEPS issues relevant for the country, including concrete actions and capacity building to implement those measures; and (iii) identify a possible priority setting.

On behalf of GIZ and IBFD, I would like to express our appreciation to the Ministry of Finance, Planning and Economic Development (MOFPED) and the Uganda Revenue Authority (URA) for their willingness to undergo the B.A.T. assessment and for their active contribution and openness, which was essential to making it possible. We sincerely hope this report will be considered a valuable contribution to these authorities when further considering and implementing measures to combat undesirable base erosion and profit shifting.

Carlos Gutiérrez Puente

© 2024 IBFD

© 2024 IBFD

Table of Contents

© 2024 IBFD

© 2024 IBFD

© 2024 IBFD

© 2024 IBFD

Abbreviations and Acronyms

APA	Advance pricing agreement
B2B	Business to business
B2C	Business to consumer
B.A.T.	BEPS Assessment Tool
BEPS	Base erosion and profit shifting
CbC	Country-by-country
CCA	Cost contribution arrangement
CFC	Controlled foreign corporation
CG	Commissioner General
CIT	Corporate income tax
CUP	Comparable uncontrolled price
DRMS	Domestic Revenue Mobilisation Strategy
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
EAC	East African Community
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, taxation, depreciation and amortization
EOI	Exchange of information
EU	European Union
FHTP	Forum on Harmful Tax Practices
IBFD	International Bureau of Fiscal Documentation
IF	OECD/G20 Inclusive Framework on BEPS
IMF	International Monetary Fund
IT	Information technology
ITU	International Tax Unit (URA)
ITA	Income Tax Act
LOB	Limitation on benefits
MAP	Mutual agreement procedure

© 2024 IBFD

MOFPED	Ministry of Finance, Planning and Economic Development
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
MNE	Multinational enterprise
NDP	National Development Plan
OECD	Organisation for Economic Co-operation and Development
OECD/G20 BEPS	OECD/G20 BEPS initiative
PCT	Platform for Collaboration on Tax
PE	Permanent establishment
PPT	Principal purpose test
SDGs	Sustainable Development Goals
TIWB	Tax Inspectors without Borders
TFDE	Task Force on the Digital Economy
ToR	Terms of reference
TP	Transfer pricing
TPC	Tax Procedures Code
TPD	Tax Policy Department (MOFPED)
TPG	Transfer Pricing Guidelines
UGX	Ugandan shilling
UK	United Kingdom
UN	United Nations
URA	Uganda Revenue Authority
USAID	United States Agency for International Development
VAT	Value added tax
WHT	Withholding tax(es)

© 2024 IBFD

Executive Summary

1. The Base Erosion and Profit Shifting Assessment Tool (B.A.T.)

B.A.T. is a tool developed to support countries in:

- evaluating their tax system's and tax authorities' strengths and weaknesses concerning the combat against international tax avoidance through base erosion and profit shifting (BEPS), including (but not limited to) the OECD/G20 BEPS Actions;
- identifying possible measures to deal with BEPS issues considered more problematic, including concrete actions and capacity building to implement those measures; and
- identifying a possible priority setting with respect to those issues and measures.

The *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) commissioned the International Bureau of Fiscal Documentation (IBFD) to develop the B.A.T., which task the two organizations undertook in partnership in 2019. The Ministry of Foreign Affairs of the Netherlands supported this initiative by funding an initial BEPS assessment in Malawi in 2019. The B.A.T. has been further reviewed and updated in 2022. B.A.T. evaluations have been carried out in Zambia (2019) and Benin (2022) and then capacity building follow-up activities have been carried out with the support of development partners.

The B.A.T. assessment is based principally on a comprehensive questionnaire answered by key officials of the tax authorities. For the purpose of this report, the term "tax authorities" of a country encompasses the tax policy authorities, tax legislation authorities and tax administration authorities. Therefore, in the case of Uganda, the term "tax authorities" means the Ministry of Finance, Planning and Economic Development (MOFPED) and the Uganda Revenue Authority (URA).

The B.A.T. assessment is also based on in-country interviews with key officials of the tax authorities in order to clarify and/or elaborate on their answers and gather evidence to validate the B.A.T. as necessary. In addition, the B.A.T. assessment requires the analysis of specific country background information. Answers to the questionnaire and interview responses are kept strictly confidential. IBFD may only share this information with other entities or governments if formally approved by the tax authorities of Uganda.

2. B.A.T. Report

This report documents the results of the B.A.T. assessment conducted in Uganda in the period of February to June 2023. The B.A.T. assessment comprises five key areas, which have been evaluated on the basis of Performance Indicators considered critical for assessing a country's current situation with respect to measures against BEPS. The results are discussed in section 2. An overview of the assessment scores is provided in section 2.7. Based on this assessment, section 3. provides conclusions and possible measures to deal with BEPS issues relevant for the country, which are suggested for consideration by the Uganda tax authorities. In addition, it provides suggestions for possible concrete actions to implement these measures and proposes areas of assistance for capacity building. A summary of these measures and actions is provided in section 3.5. (*see* Table 2.). Finally, a possible priority setting concerning BEPS issues and measures relevant for the country is suggested for the Uganda tax authorities' consideration. This priority setting is discussed in section 4., and an overview of it is presented at the end of that section (*see* Table 3.).

Some of the main conclusions and suggestions included in this report as a result of the B.A.T. assessments are as follows:

© 2024 IBFD

3. Country Strategy

The tax authorities have an overall country strategy in place as regards the combat against international tax avoidance, including BEPS, stated in the country's strategy, which is generally clearly structured and publicly available. International tax avoidance is indeed a concern for the country and an obstacle for revenue mobilization. The country's strategy clearly identifies the main issues of concern, which include OECD/G20 BEPS issues but go beyond these, and proposed countermeasures including a timeline for their implementation.

We suggest that the tax authorities also make publicly available reports that evaluate periodically, for example, on a yearly basis, progress made in implementing the country's strategy, including also the actual progress in tackling identified BEPS issues and the effectiveness of implemented countermeasures. Such evaluations may well be included in the following strategy.

As regards the tax policy making process, we suggest that the tax authorities implement their strategy by establishing formalized procedures for developing the country's more specific tax policy. Such procedures should include a well-structured consultation process for input from all relevant stakeholders, including URA, other relevant government departments and also external input from the business and tax advisory sectors and other civil society representatives.

4. Inclusive Framework on BEPS (IF) and BEPS Minimum Standards

To date, Uganda has not joined the Inclusive Framework (IF), which currently has 144 member jurisdictions. Whether Uganda should join the IF or not must be a decision to be taken in consultation with the tax authorities, i.e. MOFPED and URA, based on a careful evaluation of various issues briefly described in this report (*see* section 3.2.1.). Indeed, besides political considerations, such evaluation of the pros and cons of joining is essential to make the best choice for the country.

Uganda may in principle implement some BEPS Minimum Standards, which are internationally recognized best practices, without becoming an IF member if it considers this to be beneficial for the country. However, if it would like to benefit from receiving information i.e. CbC reporting and tax rulings (*see* below), this would seem to be difficult due to not being an IF member.

If Uganda were to choose to join the IF, it would assume the commitment of implementing all the Minimum Standards as a priority, which compliance would be peer reviewed by the IF, and in case of compliance the benefit of receiving CbC report and tax rulings would also be possible.

In preparation of such evaluation and decision of whether or not to join the IF, we consider generally the current status of compliance with these standards in Uganda and possible measures that would need to be taken to be able to become compliant. It should be clear however that the B.A.T. cannot in any way replace, or be considered as part of, the official IF peer review process of the BEPS Minimum Standards, which is the official assessment made by members of the IF.

4.1 Harmful Tax Practices (OECD/G20 BEPS Action 5):

4.1.1. Preferential regimes: Uganda currently seems to comply with the BEPS Minimum Standard regarding preferential tax regimes, as the country does not seem to have regimes with harmful features.

© 2024 IBFD

4.1.2. Exchange of information on tax rulings: Uganda may issue tax rulings covered by the Minimum Standard. The country would need to identify tax rulings in key risk categories and spontaneously exchange information on these tax rulings with all other IF jurisdictions for which those rulings may be relevant. For this it would need to take steps to implement the legal basis of the transparency framework and initiate administrative procedures to ensure an information-gathering process of existing tax rulings and that information on those rulings is exchanged. Regarding this, Uganda seems to be compliant with some requirements of the BEPS Minimum Standard, i.e. it has in place a domestic and international framework for spontaneous EOI and rules for protection of the confidentiality of information received.

4.2. Preventing Tax Treaty Abuse (OECD/G20 BEPS Action 6): Uganda has a position to adopt this BEPS Minimum Standard. This is also expressed in the EAC Model Convention, of which Uganda is a member, and also in the Uganda Model Convention proposed to the tax authorities as part of the Domestic Revenue Mobilization for Development (DRM4D) project. However, this standard is not fully adopted in any of its existing tax treaties. As no formal decision has been taken on whether or not to ratify the Multilateral Convention to Implement BEPS related measures (MLI), meeting this standard in these tax treaties will depend on bilateral renegotiations.

4.3. Country-by-Country (CbC) Reporting (OECD/G20 BEPS Action 13): According to the tax authorities, Uganda does not have multinational enterprise (MNE) groups headquartered in its jurisdiction that would be obliged to provide CbC reports. In such case, a yearly certification process would have to be put in place to determine Uganda's compliance with this standard. However, in order to receive CbC reports from foreign multinational enterprises operating in Uganda from the countries where they are residents, this wish being part of Uganda's strategy plans, the country must implement all necessary legislative, administrative and technological requirements, as if a MNE headquartered in Uganda were required to file CbC reports. Regarding this, Uganda seems to be considered compliant with respect to some requirements of the BEPS Minimum Standard, i.e. it has in place the necessary legal framework for spontaneous EOI and for protection of the confidentiality of information.

4.4. Effective Tax Treaty Dispute Resolutions (OECD/G20 BEPS Action 14): Uganda has a position to adopt the BEPS Minimum Standard as regards the inclusion in its tax treaties of the relevant tax treaty provisions, as expressed in the EAC Model Convention and in the proposed DRM4D (amended) Uganda Model Convention. However, this standard is not yet fully adopted in any of Uganda's tax treaties in force. The tax authorities have not yet initiated the analysis of measures required by the other elements of this standard, i.e. adopting the domestic legal and administrative framework and ensuring the practical implementation of the tax treaty dispute resolution mechanism (mutual agreement procedures, MAPs) by the tax authorities as required by that Minimum Standard (such as instance access to the procedure, timeliness of resolution and enforcement of its outcomes).

Regarding the relevance of these OECD/G20 BEPS Minimum Standards for Uganda in its particular situation, while recognizing the current lack of data to quantify the budgetary effect of each of those standards (*see* (5) below), we consider that Uganda could benefit particularly from:

4.5. CbC reporting (OECD/G20 BEPS Action 13): If Uganda's country strategy is implemented by adopting the model legislative, administrative and technological requirements, it could benefit from receiving CbC information from other countries in the context of transfer pricing; and effectively use this information for its transfer pricing risk assessments in order to be able to better target its auditing efforts.

© 2024 IBFD

It should be noted, however, that the fact that Uganda is not a member of the IF may make it difficult in practice to agree with relevant countries to exchange CbC reports. This is due to the absence, in this case, of a structured peer review process to check whether all requirements are met.

4.6. Exchange of information on tax rulings (OECD/G20 BEPS Action 5): In case Uganda decides to implement EOI on tax rulings, based on a cost-benefit analysis, it would need to adopt legislative, administrative and technological requirements necessary to exchange relevant tax rulings and then to benefit from receiving relevant tax rulings from the tax authorities of other countries. It should be noted, however, that the fact that Uganda is not a member of the IF may make it difficult in practice to agree with relevant countries to exchange rulings. This is due to the absence, in this case, of a structured peer review process to check whether all requirements, including confidentiality, are met.

4.7. Renegotiation of tax treaties (OECD/G20 BEPS Action 6) to include provisions to counter treaty abuse and, in particular, treaty shopping, i.e. include the new preamble and the principal purpose test (PPT) rule and/or limitation on benefits (LOB) rule; and effectively apply these provisions.

5. Measuring and monitoring BEPS

We identify as a major constraint the lack of data to measure and monitor BEPS issues. These data would be very important for the country to be able to determine which issues are most relevant in its particular situation and which countermeasures are most effective in context of domestic resource mobilization. Uganda seems to have the infrastructure in place to gather such relevant information, but it has not yet taken a formal decision on the matter (OECD/G20 BEPS Action 11 recommendations). Uganda may consider working together with the OECD on this as suggested in the Action point, and/or also with other regional organizations.

6. Suggestions for priority setting

Given the fact that Uganda has so far not decided to become a member of the IF (which would entail a priority and obligation to implement the Minimum Standards) and given the lack of data to determine the extent and budgetary relevance of the various base erosion and profit shifting issues and measures to remedy them, we suggest that priority is seemingly best given to the effective implementation of measures on which progress has already been made and which could therefore provide positive budgetary results in the short and medium term while avoiding that efforts already made with respect to these measures would have been in vain. Subsequently, work on new measures that may also be very relevant for Uganda from the point of view of protecting the existing tax base and the broader domestic resource mobilization.

6.1. First, the BEPS issues with which Uganda has been confronted with and with respect of which it has already started measures to counter them (which have also been identified by the international community as relevant issues):

6.1.1. Countering indirect transfer of assets located in the country: Effectively apply existing domestic rule by overcoming specific issues already detected. Evaluate the application of the rule in the context of tax treaties and relevance of specific tax treaty provisions to avoid possible disputes and secure the domestic taxing rights. In due time, evaluate the effectiveness of the rule to deal with the BEPS issue taking, for instance, into account the Platform for Collaboration on Tax Matters (PCT) toolkit and the provisions recently included in the 2021 UN Model Convention.

© 2024 IBFD

6.1.2. Countering abuse of base-eroding payments: Continue applying effectively existing provisions on withholding taxes on outbound payments (taking into account any tax treaty obligations) and limitation on interest deductibility (EBITDA-based rule). Consider possible amendments to the EBITDA rule and also the relevance to Uganda of the other recommendations of OECD/G20 BEPS Action 4. In due time, evaluate the effectiveness of these rules to deal with the BEPS issue.

6.1.3. Countering abuse of transfer pricing: Analyze whether all the necessary elements of OECD/G20 BEPS Actions 8-10 have been sufficiently evaluated and are effectively implemented by URA, as provided by the domestic legislation. Carefully evaluate the recommendations of the PCT toolkit to address the difficulties related to the lack of comparables data in transfer pricing analyzes. Support existing efforts to continue gathering the necessary knowledge and experience at regional and international level to effectively apply these principles through audits (ensuring that MNEs comply with these new standards). In due time, evaluate the effectiveness of these rules to deal with the BEPS issue.

6.1.4. Protecting the domestic tax base against its progressive erosion by the digitalization of the economy: Effectively implement and evaluate the effectiveness of measures already taken, i.e. value-added tax (VAT) measures, by overcoming specific issues already detected. Carefully assess the effectiveness of the recently implemented tax on non-residents providing digital services and whether they could be applied in the context of tax treaties and relevance of specific tax treaty provisions. Conduct an overall assessment of the effects of the digital economy. Follow the work done in the Inclusive Framework on the Two-Pillar Solution, in order to be able to assess and compare the options available (implemented tax v. other unilateral measures v. Pillar One solution), as well as respond to these developments as soon as possible.

6.1.5. Countering abuse of tax treaties: Continue renegotiating tax treaties in force and implement strategy by refraining from entering into negotiations for new tax treaties until a cost-benefit analysis is carried out. Continue reviewing the Uganda Model Convention in light of the EAC Model Convention and the proposed DRM4D (amended) Uganda Model Convention, considering carefully which priority to be given to OECD/G20 BEPS Actions 6 and 7 recommendations as included in the 2017 OECD and UN Model Conventions, and also other anti-abuse provisions contained in the 2021 UN Model Convention. (Re)negotiate tax treaties incorporating relevant anti-abuse provisions. *See also* section 4.7.

6.2. Subsequently, with respect to other relevant issues related to BEPS (which have also been identified by the international community as relevant issues):

6.2.1. Countering harmful tax competition: Initiate discussions about regional harmful tax competition with neighbouring countries in the EAC context with the concrete aim to have a common understanding among member countries about this problem and then ideally to establish a common tax policy to prevent such harmful competition by neighbouring countries.

6.2.2. Reviewing existing tax incentives based on the recommendations of the PCT toolkit on the effective and efficient use of investment incentives: Evaluate the impact of incentives, in particular, revenue-based incentives (e.g. tax holidays and tax exemptions that may be granted on a discretionary basis). Implement the strategy by continue to develop a comprehensive tax

© 2024 IBFD

expenditure framework. Evaluate tax incentives while taking into account the emerging implementation of the global minimum tax (Pillar Two).

6.2.3. Implement CbC Reporting, *see* section 4.5.; and

6.2.4. Implement EOI on tax rulings, *see* section 4.6.

7. Human Resources

In terms of human resources, the relevant units of the Uganda tax authorities primarily in charge of international taxation are the MOFPED Tax Policy Department (TPD) and the URA International Tax Unit (ITU). These units are staffed with officials with the requisite academic background, including postgraduate and/or professional education. These officers also undertake training on international taxation (including those provided by the OECD and the UN) but mostly develop expertise working on the job. Most senior staff are highly specialized and carry on very technical and complex work. Audits by ITU generally involve substantial amounts of revenue and, in some cases, it has yielded substantial amounts of revenue. This work is also fundamental for the country's revenue mobilization and may thus also contribute to generating a substantial amount of revenue.

In terms of challenges, we consider that there are two main interlinked issues: adequate staffing and retention policy.

7.1. Adequate staffing. TPD, in particular, the Direct Taxes Section, does not seem to have enough officers to properly carry on all assigned responsibilities in the ever-increasing international complexities. ITU has recently increased the number of officers to carry its responsibilities, however, more than a third of ITU staff are new URA recruits who still need further training and gaining of experience.

We suggest that MOFPED and URA evaluate: (i) the number of officers and their level of expertise that would be appropriate for these units to be able to successfully carry their assigned responsibilities; (ii) the need to have officers adequately specialized in specific matters (for example, tax treaty negotiation, transfer pricing and taxation of digital services); and (iii) the level of initial education for less experienced officers in these departments and permanent education for officers to stay up to date in order to be able to satisfactorily carry out their duties. Based on the outcome of such evaluation, a plan may be created to address any needs in this respect.

7.2. Adequate retention policy. In both Direct Taxes Section and ITU, there seems to be a high turnover of staff, which requires continuous investment in training new officers for being able to properly carry out the responsibilities assigned.

We suggest that MOFPED and URA consider a retention policy for highly specialized staff, in general, including officers of TPD and ITU. Such policy could consider measures, such as: (i) improving career prospects in terms of recognition of seniority (for instance by distinguishing the relevant levels of experience in junior, manager and senior manager positions) linked to a remuneration policy recognizing the various levels of seniority; (ii) reviewing the rotation policy within TPD in order to efficiently use the particular expertise of its staff; and (iii) providing specialized training which can also promote job satisfaction (*see* below).

© 2024 IBFD

8. Initial Training and Permanent Education

We recommend investing both in the operational training of existing (junior) staff in what for them are new specialized areas, and also investing in a higher specialized academic knowledge on international taxation for staff that have a couple of years of work experience and a bond with URA, by having a number of selected staff participate in specialized postgraduate Master's programmes in international tax law and/or secondments at more advanced tax administrations.

In order to consolidate and strengthen knowledge and promote interaction among international tax specialists within the tax authorities, consideration may be given to introducing a train-the-trainer approach within the URA tax academy for those who have been adequately trained, which above-mentioned education programmes may also be made available to TPD staff.

9. IT Framework

There is not yet practical experience with exchange of information of tax rulings and CbC reports. However, strategy plans expressed explicitly the wish to participate in such matters with respect to CbC reporting (exchange of information of tax rulings is not (yet) mentioned in these plans). Therefore, we suggest to carefully evaluate whether the IT technical structure and staffing would be able and capable to deal with such exchanges of information (i.e. assemble and send information, but also receive and put forward information to relevant tax officers), thus, to avoid that IT could become an obstacle once such participation in these information exchanges has been arranged.

© 2024 IBFD

1. Introduction

1.1. OECD BEPS and the Base Erosion and Profit Shifting Assessment Tool (B.A.T.)

Taxation is at the core of countries' sovereignty, but the interaction of domestic tax rules in some cases leads to gaps and frictions, including double taxation. International standards have sought to address these frictions in a way that respects tax sovereignty, but some gaps remain. In addition, over time, the existing rules have revealed weaknesses that allow base erosion and profit shifting. The term "base erosion and profit shifting" refers to international tax planning strategies that use gaps and mismatches in tax rules to artificially shift profits to low-tax or no-tax jurisdictions where there is little or no economic activity, resulting in tax avoidance.

In 2013, the G20 finance ministers called on the Organisation for Economic Co-operation and Development (OECD) to develop an Action Plan to address base erosion and profit shifting concerns in a coordinated and comprehensive manner (BEPS).[1,2] In 2015, the OECD presented a comprehensive package of measures (i.e. BEPS Minimum Standards, recommendations and best practices) to address BEPS[3] concerns, which was subsequently endorsed by the G20 (the BEPS package).[4] These measures include further guidance on the application of existing international tax standards (e.g. the arm's length principle), as well as concrete recommendations that countries may implement by introducing amendments to their domestic tax laws and tax treaties. Among these measures are the so-called BEPS Minimum Standards, which are key priority measures where action is considered urgent.[5]

Although originally a G20 project, it soon became obvious that BEPS is also relevant for developing countries. In 2014, following the G20's request, the OECD prepared a report on the main sources of base erosion and profit shifting in developing countries and how these relate to the OECD/G20 BEPS Action Plan.[6] This report, which aimed to provide the views of developing countries with respect to BEPS, acknowledged the impact of BEPS on domestic resource mobilization, resulting in forgone tax revenue and higher costs of tax collection. Issues concerning specific OECD/G20 BEPS Actions were considered as priority areas for developing countries, i.e. Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments), Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status), Actions

---

[1] OECD, *BEPS Action Plan* (2013), available at https://www.oecd.org/ctp/BEPSActionPlan.pdf.

[2] In this report, "OECD/G20 BEPS" refers to OECD/G20 BEPS initiative, package or measures; and "BEPS" refers to base erosion and profit shifting in general (and then encompassing BEPS issues and measures other than the OECD/G20 BEPS).

[3] BEPS refers generally to international tax planning strategies that use gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity, resulting in tax avoidance.

[4] For executive summaries of the 2015 OECD/G20 BEPS Final Reports, *see* https://www.oecd.org/ctp/beps-reports-2015-executive-summaries.pdf.

[5] The BEPS Minimum Standards comprise (i) combating harmful tax competition (Action 5); (ii) preventing tax treaty abuse, including treaty shopping (Action 6); (iii) improving transparency, which covers both CbC reporting (Action 13) and the exchange of certain favourable tax rulings (Action 5); and finally (iv) enhancing the effectiveness of tax treaty dispute resolution (Action 14).

[6] OECD, *Two-Part Report to G20 Developing Working Group on the Impact of BEPS in Low Income Countries*, Part 1 (July 2014) and Part 2 (Aug. 2014); available at http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf.

© 2024 IBFD

8-10 (Aligning Transfer Pricing Outcomes with Value Creation), Action 11 (Measuring and Monitoring BEPS) and Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting). The report also recognized additional areas of concern regarding base erosion and profit shifting not covered under the BEPS package, i.e. tax incentives, lack of comparability data for transfer pricing, base-eroding payments such as fees for technical services and tax avoidance through offshore indirect transfer of assets located in developing countries.

Soon afterwards, in 2015, the United Nations (UN) Subcommittee on BEPS also acknowledged the relevance of BEPS for developing countries, concluding that some specific OECD/G20 BEPS Actions were of high priority for them. In the same year, a collaborative engagement with government representatives from developing countries, members of the UN Tax Committee, international tax experts and relevant international and regional organizations resulted in the publication of the UN Handbook on Selected Issues in Protecting the Tax Base of Developing Countries (UN Tax Handbook), which was updated in 2017 according to new emerging issues and the latest international developments. This work addresses BEPS issues of particular importance to developing countries, with a view to identifying the most suitable options available for protecting their tax bases in light of their specific needs, levels of capacity development and resource constraints.

Taking this work into account, the OECD started to consider the interests of developing countries in the implementation work of the OECD BEPS package, which started following the release of the final reports in 2015. As a consequence, the OECD established the Inclusive Framework on BEPS in 2016, open to G20 and non-G20 countries and jurisdictions, including developing countries, to participate on an equal footing in the BEPS work while also committing to implementing the BEPS Minimum Standards as the highest priority. In 2016, the International Monetary Fund, the OECD, the UN and the World Bank launched the Platform for Collaboration on Tax (PCT) to intensify their cooperation on tax issues, with the main aim being to better support governments in addressing tax challenges. One key priority is to better frame technical advice to developing countries as they seek more capacity support and participation in designing international rules. Most of the work of the PCT has dealt with the preparation of eight toolkits on specific topics relating to base erosion and profit shifting.[7]

Having recognized the importance of the topic, GIZ wanted to gain insights into the implementation status of the OECD/G20 BEPS Action Plans in its partner countries. In 2017, IBFD prepared a report for GIZ that assessed the status of the implementation of the OECD/G20 BEPS measures in selected developing countries, paying special attention to the challenges and needs of those countries when deciding on and implementing specific measures (Implementing the OECD/G20 BEPS Package in Developing Countries). The report analyzed the situation in various countries and, while recognizing that in some developing countries other more fundamental flaws exist in their systems of tax legislation or administration (which should also be addressed), focused on providing recommendations based on which countries could decide on how to deal with this complex matter. It also attempted to provide guidance on some relevant policy questions, such as whether countries should join the IF, whether countries should sign the MLI and whether CbC reporting by MNEs should become public.[8]

---

[7] *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment* (15 Oct. 2015); *Addressing Difficulties in Accessing Comparable Data for Transfer Pricing Analyses* (22 June 2017); *Taxation of Offshore Indirect Transfers* (6 June 2020); Transfer pricing documentation requirements; Tax treaty negotiation; Base-eroding payments; Supply chain restructuring; and Assessment of BEPS risks.

[8] GIZ*, Implementing OECD/G20 BEPS Package in Developing Countries: An assessment of priorities, experiences, challenges and needs of developing countries* (2018), available at wp_implementing_beps_package_developing_countries.pdf (giz.de)

© 2024 IBFD

As a follow-up to this report, GIZ commissioned IBFD to develop the B.A.T., which task was undertaken by the two organizations in partnership in 2019. The Ministry of Foreign Affairs of the Netherlands supported this initiative by funding an initial BEPS assessment in Malawi in 2019. The B.A.T. has been further reviewed and updated in 2022. B.A.T. evaluations have been carried out in Zambia (2019) and Benin (2022) and then capacity building follow-up activities have been carried out with the support of development partners.

The B.A.T. not only follows up on the report's recommendations for the assessment of the status of implementation of the OECD/G20 BEPS measures but expands on it to cover other BEPS issues identified by the UN and the PCT as relevant for developing countries.

The B.A.T. supports countries in:

- evaluating their tax system's and tax authorities' strengths and weaknesses concerning the combat against international tax avoidance through BEPS, including (but not limited to) the OECD/G20 BEPS Actions;
- identifying possible measures to address BEPS issues considered more problematic, including possible concrete actions to implement these measures and identifying needs and assistance for capacity building to implement BEPS measures; and
- identifying a possible priority setting with respect to those BEPS issues and measures.

The B.A.T. assessment deals with selected BEPS issues and/or recommendations to tackle those issues, as follows:

- the OECD/G20 BEPS Actions considered to be most relevant for developing countries, i.e. Action 1 (tax challenges of the digital economy), Action 4 (limiting base erosion through interest payments), Action 6 (preventing treaty abuse), Action 7 (preventing artificial avoidance of PE status), Actions 8-10 (transfer pricing), Action 11 (measuring and monitoring BEPS), Action 13 (transfer pricing documentation) and Action 15 (developing a multilateral instrument to modify tax treaties);
- the OECD/G20 BEPS Actions measures constituting BEPS Minimum Standards, i.e. besides Action 6 and Action 13, Action 5 (combating harmful tax competition) and Action 14 (enhancing the effectiveness of tax treaty dispute resolution);
- other selected BEPS issues and measures relevant for developing countries dealt with by the PCT toolkits and in the UN Tax Handbook, i.e. the use of tax incentives, lack of comparability data for transfer pricing, offshore indirect transfer of assets and base-eroding payments; and
- the latest initiatives from the UN and the OECD/G20 Inclusive Framework on BEPS to deal with the taxation of the digitalized economy (the two-pillar solution).

© 2024 IBFD

1.2. B.A.T. assessment in Uganda

At the request of the Permanent Secretary, Secretary to the Treasury, Ministry of Finance, Planning and Economic Development, Mr. Ramathan Ggoobi, the B.A.T. assessment was conducted in Uganda during the period of February to June 2023. The assessment process involved the following steps:

- initial online kick-off meeting on 27 January 2023 between IBFD, USAID and key country tax authorities' officials from MOFPED and URA (*see* Annex A.3. for a list of officials involved in the assessment). This meeting had the purpose of presenting the B.A.T., explaining the assessment process and defining a suitable timetable;
- data collection by means of:
  - the B.A.T. Questionnaire sent by IBFD to the country tax authorities on 27 January 2023, which was answered by key officials of the Uganda tax authorities in February – April 2023 (*see* Annex A.1.); and
  - in-country visit interviews on 17-20 April 2023 with key officials of the Uganda tax authorities who answered the questionnaire (i) to clarify and validate answers to the questionnaire and gather evidence or additional information when necessary; and (ii) to discuss possible measures to effectively deal with identified base erosion and profit shifting issues considered relevant by the country;
- review and comments by the Uganda tax authorities on the assessment report prepared by IBFD in July 2023; and
- initial presentation of the assessment and main recommendations of the B.A.T. report to the Uganda tax authorities on 4 July 2023.

The Assessment Team consisted of Vanessa Arruda Ferreira, Jan de Goede (project supervisor), Carlos Gutiérrez P. (project leader), Francesco de Lillo, Yvette Nakibuule Wakabi and Birhanu Tadesse Daba.

The results of the assessment are discussed in section 2. Based on this assessment, section 3. provides some conclusions and possible measures concerning base erosion and profit shifting. A possible priority setting concerning base erosion and profit shifting is suggested for the tax authorities' consideration in section 4. Relevant country background information considered when preparing this report, including a list of sources of evidence, is provided in Annex B.

GIZ and IBFD would like to express their appreciation to the Uganda tax authorities for their willingness to undergo the B.A.T. assessment and for their active contribution and openness, which was essential to making it possible. We sincerely hope this report will be considered a valuable contribution to these authorities when further considering and implementing measures to combat undesirable base erosion and profit shifting.

© 2024 IBFD

2. B.A.T. Assessment

2.1. Methodology

Key Areas of Assessment

In order to assess a country's situation with regard to base erosion and profit shifting, the B.A.T. assessment comprises the following five key areas:

- Key Area of Assessment A: Country strategy on (i) tax avoidance in general; (ii) tax avoidance through issues dealt with in selected OECD/G20 BEPS Actions, including those addressed by the BEPS Minimum Standards; and (iii) tax avoidance through other base erosion and profit shifting issues (strategy framework).

- Key Area of Assessment B: Adoption of measures, including BEPS Minimum Standards, to deal with (i) selected OECD/G20 BEPS issues; and (ii) other base erosion and profit shifting issues (legislative and regulatory framework).

- Key Area of Assessment C: Tax authorities' organization to apply measures, including BEPS Minimum Standards, to deal with (i) selected OECD/G20 BEPS Actions issues; and (ii) other base erosion and profit shifting issues (organizational framework).

- Key Area of Assessment D: Staff expertise to effectively apply measures, including BEPS Minimum Standards, to deal with (i) selected OECD/G20 BEPS Actions issues; and (ii) other base erosion and profit shifting issues (expertise framework).

- Key Area of Assessment E: Information technology (IT) infrastructure to implement specific IT requirements of selected OECD/G20 BEPS Actions (IT framework).

Performance Indicators

The five key areas are assessed on the basis of Performance Indicators. Each Performance Indicator is measured based on specific scoring criteria.

The description of each Performance Indicator, the specific elements that are assessed and its scoring criteria is provided in Annex A.2.: B.A.T. Key Areas of Assessment, Performance Indicators and Criteria for Scoring based on International Best Practices (B.A.T. Scoring Criteria).

Performance Indicators belonging to Key Areas of Assessments B.1, B.2 and E are based on the following international best practices:

- For OECD/G20 BEPS Action measures:
  - for the Minimum Standards, the recommendations as provided by the Terms of Reference (ToR) for Peer Reviews; and
  - for non-Minimum Standards, the recommendations established in the final reports of the selected OECD/G20 BEPS Actions.

© 2024 IBFD

- For other base erosion and profit shifting issues, the recommendations provided by:
  - the UN Tax Handbook on protecting the tax base; and
  - the toolkits developed by the PCT.

The evaluation of each PI focuses on specific elements (e.g. specific best practices for achieving effective and efficient use of tax incentives for investments). As each element is separately assessed and scored, the assessment of a PI may result in various scores. However, where scores are the same, the elements are grouped accordingly.

Scoring scale

A four-point A/B/C/D scale is used to score each Performance Indicator. Generally, the scoring of this scale is arranged as follows:

- "A" denotes performance that meets international best practices;
- "B" represents strong performance, but below international best practices;
- "C" means weak performance relative to international best practices; and
- "D" denotes inadequate performance relative to international best practices.

For most Performance Indicators, an alternative score *Other* is provided for situations in which it is not possible to give a score under the A-D scale, generally because it is not possible to grade the implementation of the international best practices. The criteria for the score Other are specified for each Performance Indicator.

For further information about the B.A.T. process and its methodology, *see* section 1.2. of the B.A.T. Scoring Criteria.

© 2024 IBFD

2.2. Key Area of Assessment A: Strategy framework

Description of Performance Indicators of Key Area of Assessment A

Key Area of Assessment A evaluates whether the country has a clearly structured strategy and priority setting regarding (i) international tax avoidance generally (Performance Indicator A.1.); (ii) the OECD/G20 BEPS initiative (Performance Indicator A.2.); (iii) joining the OECD/G20 Inclusive Framework on BEPS (IF) (Performance Indicator A.3.); (iv) other base erosion and profit shifting issues (Performance Indicator A.4.); (v) tax issues raised by the digitalization of the economy (Performance Indicator A.5.); and (vi) endorsing the OECD/G20 Statement on a Two-Pillar Solution (Performance Indicator A.6.).

For the purpose of the Performance Indicators A.1., A.2., A.4. and A.5., it is considered that the country has a clearly structured strategy and priority setting, communicated to all tax authorities and relevant stakeholders, where:

- *relating to having a strategy and priority setting: such strategy and priority setting is stated in the government's current and/or past strategy document(s) or other similar official documents;*
- *relating to the strategy and priority setting being clearly structured: it is reasonably possible, by studying the strategy documents available, to understand the past and present overall strategy, priorities on such matters and progress made over time (e.g. this would not be the case when there are various loose strategy documents and/or they are not consistent); and*
- *relating to the strategy and priority setting being properly communicated: such strategy and priority setting is communicated to all tax authorities and other relevant stakeholders (i.e. taxpayers and advisory sectors). It is understood that this is the case when the relevant documents are publicly available (e.g. on the tax authorities' website) and/or they are communicated actively (e.g. in official presentations to specific sectors or a statement in a Budget Speech).*

Scores A to C assess the level of development of a country's strategy when a country already has a position to dealt with relevant issue(s) assessed in each performance indicator (i.e. the country has analyzed and concluded that the relevant issue(s) are relevant and should be dealt with). Score D is applicable in case the country does not have a strategy on the relevant issue(s) because it has not yet analyzed it. Score Other applies in cases where the country considers that it is not a priority to deal with the issue(s) (and therefore there is no need for a strategy and, consequently, no assessment of implementation is necessary).

For the purpose of the Performance Indicators A.3 and A.6:

- *the country has taken an informed position to either join or not join the IF, and to either join or not join the Statement on a Two-Pillar solution (i.e. a position that is based on an analysis of the benefits and obligations), as well as the resources needed for implementing such decision and related obligations. Such position may or may not be established in a strategy document; and*
- *such position is communicated to all tax authorities and other relevant stakeholders (i.e. taxpayers and advisory sectors). It is understood that this is the case when the relevant documents are publicly available (e.g. on the tax authorities' website) and/or they are communicated actively (e.g. in a press release or a statement in a Budget Speech). For this purpose, it is understood that the OECD official statement that a country has joined the IF or joined the Statement on a Two-Pillar Solution is not sufficient.*

2.2.1. Performance Indicator A.1.

Performance Indicator and score

Performance Indicator	Score
Clearly structured strategy and priority setting regarding international tax avoidance, stated in a strategy document(s) and communicated to all tax authorities and other relevant stakeholders.	A

© 2024 IBFD

Preliminary considerations

The country strategy as regards international tax avoidance is stated in the following documents:

National Development Plan (NDP)

The National Development Plan (NDP) is a 5-year plan prepared by MOFPED. This plan determines the country's medium-term strategy direction, development priorities and implementation strategies. So far, two NDPs have been produced (the First National Development Plan (NDPI) for the period 2010/11 – 2014/2015 and the Second National Development Plan (NDPII) for 2015/16 – 2019/2020). The current plan is the Third National Development Plan 2020/21 – 2024/25 (NDPIII).[9]

The guiding framework of the NDPIII is mainly based on the UN Sustainable Development Goals (SDGs) and all NDPs (including NDPIII) are publicly available on the National Planning Authority website. The NDPIII is implemented through budget framework plans. The NPD deals with taxation at a general level but it does not provide for concrete measures.

In terms of revenue strategy, the NDPIII focuses on the improvement of compliance and efficiency in revenue collection, through the implementation of the Domestic Revenue Mobilization Strategy 2019/20-2023/24. Among other actions, the NDPIII mentions the provision of better training and resources to URA to modernize and expand ICT capability and other necessary tools to foster higher compliance *(see* NDPIII, p. 29*).*

With reference to international taxation and avoidance, the NDPIII provides for the following strategy:

- implementing reforms to reduce tax avoidance, expand the tax base by tapping into semi-formal economic activities, and improve the efficiency of URA (*see* NDPIII, p. 3);
- renegotiating the tax treaties to bring them in line with the Uganda tax treaty policy (*see* NDPIII, p. 224);
- reviewing the current fiscal regime applicable to extractive and mining sector to fully capture revenue streams and the full value chain (*see* NDPIII, p. 224); and
- linking tax compliance with the re-licensing of traders and service providers, expanding the withholding tax regime to capture evaders at the point of engagement with the government (*see* NDPIII, p. 223).

Also, among the development strategies adopted by the NDPIII, the increase of government participation in strategic sectors is a priority where the government should make a strategic decision to either: (i) invest directly or jointly with the private sector; (ii) use government lending at preferential interest rates to promote private investment in key sectors; or (ii) provide tax benefits to key private sector players, in selected priority sectors in line with the local content policy, to increase investment and production in key strategic industries or sectors (*see* NDPIII, at p. 49). Also, as part of the development plan objective of strengthening budgeting and resource mobilization, the NDPIII indicates as one intervention the conduct of a cost-benefit analysis of current tax exemptions and government subsidies (*see* NDPIII, p. 218).

The NDPIII also confirms that reforms in tax policy and administration have contributed to an increased domestic revenue collection over time – though not yet sufficiently. At least 75% of the national budget is domestically financed, but the tax to GDP ratio remained low at 12.9% in fiscal year 2019/20. Slow progress has been made in mobilizing domestic resources to finance results (*see* NDPIII, p. 215).

---

[9] The NPDIII is available at http://www.npa.go.ug/wp-content/uploads/2020/08/NDPIII-Finale_Compressed.pdf (accessed 1 May 2023).

© 2024 IBFD

Domestic Revenue Mobilization Strategy (DRMS)

The Domestic Revenue Mobilization Strategy (DRMS) is prepared by MOFPED and provides the revenue policy framework. The current plan is the DRMS 2019/20-2023/24,[10] but its implementation was delayed to the year 2020/2021 due to the pandemic.

The DRMS has clear strategy with set objectives, targeted challenges and needed interventions to counter tax challenges. The DRMS provides a tax policy development process (pages 45 to 48 of DRMS) (*see also Justification* below) and is publicly available on the website of MOFPED. There is formally a DRMS Steering Committee consisting of representatives from MOFPED, URA, the National Planning Authority, the Parliamentary Budget Office, the World Bank, the IMF, UK-DFID (now the Foreign, Commonwealth and Development Office (FCDO)), USAID, the EU delegation, Kreditanstalt für Wiederaufbau (KfW), the United Nations Development Programme, Economic Policy Research Centre, and the International Growth Centre and civil society organizations; however, the Assessment Team does not have information about whether such a Committee is actually operational.

The DRMS is implemented through the DRMS Implementation Plan and the annual budget proposals which are discussed and approved in parliament.

With reference to international taxation and avoidance, the current DRMS sets out the following objectives:

- taking a series of steps to improve the transparency of the tax system, including the annual publication of a report on tax expenditures, in line with best international practice (*see* DRMS, p. 15);
- addressing challenges in tax administration particularly on data analysis in specialized areas of taxation such as international tax, and audit and enforcement (*see* DRMS, pp. 14-16);
- cutting down on the abuse of the tax system by international investors (*see* DRMS, p. 16);
- ensuring that international tax agreements and treaties minimize opportunities for abuse and are aligned with the international best practices (*see* DRMS, p. 51);
- implementing the relevant OECD/G20 BEPS Actions to address Uganda's international tax concerns (*see* DRMS, pp. 61-62);
- renegotiating all the existing tax treaties to bring them in line with the Uganda tax treaty policy (*see* DRMS, p. 64);
- enhancing exchange of information by signing agreements to facilitate exchange of financial accounting information, country-by-country reporting, tax examinations abroad, mutual assistance procedures, and assistance in recovery (*see* DRMS, p. 64);
- modifying the source rules and transfer pricing provisions to protect Uganda's tax base against tax avoidance and tax planning (*see* DRMS, p. 64);
- establishing an appropriate, evidence-based tax expenditure governance framework to limit leakages and improve transparency (*see* DRMS, p. 68);
- reviewing the current tax laws to achieve a tax regime suitable for the digital economy, including consideration of the results of the BEPS initiative in this regard (*see* DRMS, p. 82) – *see* details in sections 2.2.5. and 2.2.6.;

[10] The DMRS is available at https://www.finance.go.ug/sites/default/files/Publications/NEW%20DOMESTIC%20REVENUE%20MOBILISATION%20STRATEGY_FEB%202020_0.pdf (accessed 1 May 2023)

© 2024 IBFD

- ensuring that URA adapts to the new challenges posed by e-commerce, including the multi-jurisdictional, opaque nature of business, by auditing known e-commerce companies and expediting the implementation of key public infrastructure to authenticate digital transactions (*see* DRMS, p. 82); and
- implementing the automatic exchange of information and common reporting standards for tax purpose to combat international tax evasion and detect illicit financial flows and transfer pricing issues through enhanced cooperation with other tax jurisdictions (*see* DRMS, p. 110).

With specific reference to the extractive sector, the current DRMS aims:

- to strengthen international tax rules to limit aggressive tax planning (*see* DRMS, p. 72); and
- to strengthen international tax rules by modernizing the source rules for technical fees and the definition of "branch" (*see* DRMS, p. 71).

DRMS Implementation Plan

The DRMS implementation plan is a MOFPED internal working document. The plan gives a greater detail to the policy proposals set out in the DRMS. It describes the DRMS existing and proposed interventions and their progress.

Below are the interventions provided for in the DRMS Implementation Plan in respect of international taxation:

- to improve tax information sharing domestically and internationally;
- to establish and publish a tax expenditure governance framework;
- to review CIT exemptions and consider alternative approaches; and
- to strengthen international tax rules and enforcement.

The DRMS implementation plan also lists addressing the impact of the digital economy on the tax base – and more specifically developing a concept note focusing on BEPS and taxation of digital economy – as a proposed intervention under "Proposed DRMS Work Plan" (for details, *see* section 2.2.5.).

MOFPED Strategic Plan 2016-2021

For the period 2016-2021, MOFPED published a Strategic Plan[11] with the aim to increase efforts in domestic revenue mobilization. Concerning BEPS, the MOFPED Strategic Plan 2016-2021 planned to provide policy tools for countering BEPS issues in complex sectors (*see* MOFPED Strategic Plan, p. 30).

Uganda Tax Treaty Policy

[11]The MOFPED Strategic Plan 2016-2021 is available at https://www.finance.go.ug/sites/default/files/Publications/MOFPED%20STRATEGIC%20PLAN%202016_2021%20printed.pdf (accessed 1 May 2023).

© 2024 IBFD

In 2015, MOFPED prepared a tax treaty policy framework, which is an important component of the domestic revenue mobilization. The treaty policy framework has highlighted, among other things, significant risks which could undermine tax collection in respect of international transactions (page 8). These include:

- avoidance of PE or fixed base in Uganda of a non-resident;
- indirect transfers of interests deriving their value from Ugandan assets;
- treaty shopping;
- reduction of tax rates;
- taxation of residual income (income not specifically covered in the DTA) arising from Uganda in the state of residence; and
- entitlement to treaty benefits of entities entitled to preferential regimes of tax systems of residence states.

The treaty policy document further provides the guiding principles for Uganda's tax treaty negotiations/renegotiations by emphasizing mechanisms that could help Uganda preserve its taxing rights and prevent abusive practices.

URA Corporate Plans

URA prepares 5-year strategic corporate plans, and yearly plans. These plans are available on URA's web portal. The current plan is the Corporate Plan 2020/21-2024/25.[12] URA's interventions and actions to meet set objectives are grouped under eight lenses, namely, maximizing revenue, improving voluntary compliance, enhancing service quality, strengthening stakeholder collaboration, improving data management, improving process management, enhancing staff capacity and enhancing organization infrastructure.

In respect of international taxation, the URA Corporate Plan 2016/17 – 2019/20 identified the following interventions:

- equipping enough staff with skills in auditing multinational enterprises, especially in the telecom sector; and
- managing the increasing tax complexity relating to new business models and globalization (pp. 24-25).

In respect of international taxation, the URA Corporate Plan 2020/21-2024/25 identified the following interventions:

- strengthening the audit arm and international taxation segments to comprehensively assess taxes for MNEs;
- implementing exchange of information activities to identify potential taxpayers, verification of information and reduce tax gap; and
- implementing activities to mobilize revenue from on-line businesses/ digital economy.

Justification for score A

---

[12] The URA Corporate Plan 2020/21 - 2024/25 is available at https://www.ura.go.ug/openFileController/execute?path=//webupload//upload//download//staticContent//TOPMENU//10028//10376_URA_Corporate_Plan.pdf (accessed 1 May 2023).

© 2024 IBFD

The country is given score A, as there is a government strategy and priority setting regarding international tax avoidance stated in the strategy plans. Such a strategy is clearly structured, and it is communicated to all tax authorities and other relevant stakeholders.

As detailed in the *preliminary considerations*, all strategy documents and the tax treaty policy generally refer to international tax avoidance as a concern for the country and as an obstacle for revenue mobilization. In this context, addressing international tax avoidance becomes part of the strategy plans in all strategy documents – for example, the NDPIII indicates the implementation of reforms to reduce tax avoidance as one of its objectives, while the DRMS lists a series of measures that should be implemented for combatting different forms of international tax avoidance. These strategy documents are clearly structured (from general medium-term strategy and policy framework plans to annual and detailed implementation plans) and are communicated to all tax authorities and other relevant stakeholders (they are publicly available, except for the DRMS implementation plan, which is an internal working document for MOFPED).

2.2.2. Performance Indicator A.2.

Performance Indicator and score

Performance Indicator	Score
Clearly structured strategy and priority setting stated in a strategy document and communicated to all tax authorities and other relevant stakeholders regarding OECD/G20 BEPS recommendations and their implementation, including BEPS Minimum Standards.	B

Justification for score B

The country is given score B, as there is a country strategy regarding OECD/G20 BEPS, stated in its current and/or past strategy documents and sufficiently communicated to all tax authorities and other stakeholders; however, the strategy is not clearly structured and there is not a clear priority setting as regards the different BEPS issues and actions to be taken.

Uganda is not an IF member, nevertheless its strategy documents consider to a certain extent some issues identified in the OECD/G20 BEPS Projects. The DRMS specifically refers to the implementation of the OECD/G20 BEPS Actions to address Uganda's international tax concerns as one of its objectives including particularly the implementation of exchange of CbC reports. The DRMS also refers to the need for a review of the current tax laws to achieve a tax regime ready for the digital economy and that this review should take account of analysis and discussion that has resulted from the BEPS initiative, specifically referring to the follow-up work of the OECD/G20 on BEPS Action 1 (Pillar One solution) (*see* details in section 2.2.6.). Also, the MOFPED Strategic Plan 2016-2021 planned to increase efforts in domestic revenue mobilization by providing policy tools for countering BEPS in complex sectors (*see* details in section 2.2.1.).

© 2024 IBFD

These strategy documents, which present a strategy and priority setting regarding OECD/G20 BEPS recommendations and their implementation, including BEPS Minimum Standards, are communicated to all tax authorities and other relevant stakeholders (they are publicly available).

However, this strategy could still be further structured by stating specific actions to be taken to address the BEPS issues and also establishing a priority setting concerning the various OECD/G20 BEPS Actions issues and concrete actions to be taken (for an overview of Uganda strategy plans, *see* section 2.2.1., under *preliminary considerations*).

2.2.3. Performance Indicator A.3.

Performance Indicator and score

Performance Indicator	Score
Strategic position regarding to either join or not join the OECD/G20 Inclusive Framework on BEPS (IF) communicated to all tax authorities and other relevant stakeholders.[13]	C

Justification for score C

The country is given score C, as the country has evaluated the IF, but there is no (official) position to either join or not join the IF (yet).

Reportedly, when Uganda was approached by the OECD, the TPD studied and evaluated the convenience for the country to join the IF. The outcome was to evaluate the progress of the IF and experiences of other countries in a similar situation. TPD is indeed monitoring developments at the IF, particularly, the two-pillar solution. To date, besides considering that the IF has more than 140 jurisdictions, there is not a clear view about the pros and cons of joining it. The Cabinet has not decided on this issue yet.

2.2.4. Performance Indicator A.4.

Performance Indicator and score

Performance Indicator	Score
Clearly structured strategy and priority setting regarding BEPS issues, other than OECD/G20 BEPS initiative, stated in current and/or past	B

[13] In 2016, the OECD established the Inclusive Framework on BEPS in its endeavour to foster a universal implementation of the OECD/G20 BEPS Action Plan and open discussions and decisions on related measures to non-G20 countries and jurisdictions, including developing countries. It should allow its members to participate on equal footing in the BEPS work while also committing to implementing the BEPS Minimum Standards as the highest priority. See section 3.2.1. for further information on the IF.

© 2024 IBFD

strategy document(s) and is communicated to all tax authorities and other relevant stakeholders.	

Justification for score B

The country is given score B, as there is a country strategy regarding BEPS issues other than the OECD/G20 BEPS initiative, stated in current and/or past strategy document(s) and sufficiently communicated to all tax authorities and other stakeholders; however, the structure is not clearly structured and there is not a clear priority setting among the different BEPS issues and actions to be taken.

All strategy documents generally refer to international tax avoidance as a concern for the country and as an obstacle for revenue mobilization. Addressing international tax avoidance becomes part of the strategy plans in all strategy documents.

The concerns and measures planned go beyond the OECD/G20 BEPS initiative.

The DRSM states as aims:

- modifying source rules to protect Uganda's tax base as well as the modernization of the source rules for technical fees and the definition of "branch"; and
- taking a series of steps to improve the transparency of the tax system, including the annual publication of a report on tax expenditures, in line with best international practice. This attests the concerns of the country in respect of effective and efficient use of tax incentives.

The NDPIII states the aims:

- to renegotiate tax treaty provisions to bring them in line with the Uganda tax treaty policy;
- to review the fiscal regime to fully capture revenue streams and the full value chain of the extractive and mining sector;
- to link tax compliance with re-licensing of traders and service providers, expanding the withholding tax regime to capture evaders at the point of engagement with the government; and
- to conduct a cost-benefit analysis of current tax exemptions and government subsidies.

The tax issues arising from digitalization of the economy are also addressed in different strategy documents. They refer to the need for review of the current tax laws to achieve a tax regime that is ready for the digital economy not necessarily using (but considering) the measures proposed by the OECD/G20 as a follow up of the OECD/G20 BEPS initiative (i.e. Pillar One solution) (*see* sections 2.2.5. and 2.2.6).

These strategy documents, which present a strategy and priority setting regarding BEPS issues other than OECD/G20 BEPS initiative, are communicated to all tax authorities and other relevant stakeholders (they are publicly available).

However, the strategy could still be further structured by stating specific actions to be taken to address these BEPS issues and also establishing a priority setting concerning these various BEPS issues and concrete actions to be taken.

© 2024 IBFD

(For an overview of Uganda strategies, *see* section 2.2.1., under *preliminary considerations*).

2.2.5. Performance Indicator A.5.

Performance Indicator and score

Performance Indicator	Score
Clearly structured strategy and priority setting regarding tax issues raised by the digitalization of the economy stated in a strategy document and sufficiently communicated to all tax authorities and other relevant stakeholders.	A

Justification for score A

The country is given score A, as there is a clearly structured country strategy on the tax issues raised by the digitalization of the economy stated in its current and/or past strategy document(s) and sufficiently communicated to all tax authorities and other stakeholders.

The tax issues raised by the digitalization of the economy are recognized by the current DRMS under the section "Taxation of Digital Economy" (at page 82). In this section, it is recognized that it is becoming increasingly impossible to ring-fence the digital economy from the rest of the economy for tax purposes and, therefore, tax-related concerns are better addressed by focusing on the key features of the digital economy which might exacerbate challenges, in the context of existing structures. It is also indicated that the digital economy is constantly evolving, so potential future developments should be closely monitored to assess the additional tax challenges that these may create. The section continues recognizing the difficulty in assessing where e-commerce creates value, what it is, and how it should be measured, as well as how these problems are amplified by permanent establishment rules, which are currently based largely on physical presence.

The section indicates that the provisions of the ITA and VAT Act are limited in their ability to tax businesses which do not meet the thresholds of physical presence, and indicates the following interventions:

"(i) Review the current tax laws to achieve a tax regime ready for the digital economy. This review should take account of analysis and discussion that has resulted from the BEPS initiative. It will be important to ensure that, as far as is consistent with Uganda's national interests, any measures that are introduced go with the grain of international action. It will be difficult to maintain a contrary position.

(ii) Ensure that URA adapts to the new challenges posed by e-commerce, including the multi-jurisdictional, opaque nature of business. One possible approach to build knowledge on handling the sector is to audit a representative group of known e-commerce companies based in Uganda. Finally, the implementation of key public infrastructure to authenticate digital transactions should be expedited."

It should also be indicated that the DRMS implementation plan (an internal working plan that is not publicly available – *see* section 2.2.1.) lists addressing the impact of the digital economy on the tax base – and

© 2024 IBFD

more specifically developing a concept note focusing on BEPS and taxation of digital economy – as a proposed intervention under "Proposed DRMS Work Plan" as well as monitors its progress.

Indeed, both MOFPED and URA indicated in their answers to the questionnaire as well as during the in-country visit interviews that taxation of the digitalized economy is a priority for the country. They indicated that the issue has been partially addressed through VAT legislation in place (for details, *see* section 2.3.2.12.) and that there is a proposed amendment to the ITA (through the Tax Amendment Bills 2023) for the implementation of a (direct) tax on digital services which, reportedly, was passed by the parliament in July 2023 (for details, *see* section 2.3.2.13.).

Therefore, it can be concluded that the country has been analyzing the issues arising from the digitalization of the economy and has a clearly structured strategy and priority setting regarding this topic. In addition, because the DRMS is a plan that is publicly available, it is considered as sufficiently communicated to all tax authorities and other relevant stakeholders.

2.2.6. Performance Indicator A.6.

Performance Indicator and score

Performance Indicator	Score
Strategic position to either join or not join the IF Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy (the Statement) of 8 October 2021.[14]	**Other**

Justification for score Other

The country is given score "Other", as it currently has the position not to join the Statement.

Uganda is aware of the discussions on how to address the challenges arising from the digitalization of the economy and, more specifically, of the proposal for a two-pillar solution by the IF, but the current position of the tax authorities is not to join the Statement. It should be noted that there is no official decision of the Cabinet yet.

In respect of Pillar One, the country is aware of the problems arising from the digitalization of the economy in combination with permanent establishment rules based largely on physical presence (*see* section 2.2.5.). For the time being, the country is opting for alternative measures to tax the digitalized economy, such as the tax on digital services recently passed by parliament (for details, *see* section 2.3.2.13.). Although there is no official decision of the Cabinet concerning Pillar One, these alternative measures clearly indicate that the country is addressing the topic but deviating from Pillar One.

[14] OECD/G20 Base Erosion and Profit Shifting Project, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy 8 October 2021 (OECD 2021), available at https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf.

© 2024 IBFD

However, the country does not dismiss the possibility of eventually joining the international efforts to tax the digitalized economy if it is consistent with the country national interests. In this sense, the current refers, under the section "Taxation of Digital Economy" (page 82 of the DRMS), to the need of review of the current tax laws to achieve a tax regime ready for the digital economy and that "this review should take account of analysis and discussion that has resulted from the BEPS initiative. It will be important to ensure that, as far as is consistent with Uganda's national interests, any measures that are introduced go with the grain of international action. It will be difficult to maintain a contrary position."

In respect of Pillar Two, the TPD is monitoring the developments and analyzing the implications for Uganda and, more specifically, for Uganda's tax incentives. The complexity of the proposals under the two-pillar solution was also mentioned in the in-country visit interviews as one of the reasons for the country's current position of not joining the IF Statement. Accordingly, further thorough analysis is still needed for understanding the details of the proposal and its effects for the country.

© 2024 IBFD

2.3. Key Area of Assessment B: Legislative and regulatory framework

Key Area of Assessment B evaluates whether a country has adopted domestic and/or international measures resulting from the OECD/G20 BEPS Minimum Standards, other OECD/G20 BEPS Actions recommendations, the UN Tax Handbook on Protecting the Tax Base recommendations and the PCT toolkits recommendations on tackling base erosion and profit shifting.

This Key Area of Assessment is divided into two parts:

- Key Area of Assessment B.1., which evaluates compliance with the OECD/G20 BEPS Minimum Standards; and
- Key Area of Assessment B.2., which evaluates the adoption of measures, other than the BEPS Minimum Standards, to deal with selected OECD/G20 BEPS issues and other base erosion and profit shifting issues. The specific measures assessed are described in each Performance Indicator section.

Scores *A* to *C* assess the level of implementation of measures (i.e., legislative measures and/or administrative practice) in case the country has a position to adopt the relevant recommendations (i.e. OECD/G20 BEPS Actions recommendations, including BEPS Minimum Standards, and other base erosion and profit shifting recommendations).

Score *D* applies in case the country has no position, because it has not yet analyzed those recommendations.

Score *Other* applies in cases where the country has a position not to adopt the relevant recommendations (and therefore no measure needs to be implemented and, consequently, no assessment of implementation is necessary). However, in the case of the BEPS Minimum Standards, once a country has joined the IF, it has taken a position to implement the BEPS Minimum Standards and therefore may only be graded under the A-D scale.

With regards to PIs relating to adoption of measures for compliance with the OECD/G20 BEPS Minimum Standards (i.e. Key Area of Assessment B.1):

- in case a country has been officially peer reviewed under the process of the IF, the score given follows the result of such peer review; however, the B.A.T. assessment may highlight what the country may still need to do, or acknowledge subsequent progress made by the country to meet the Minimum Standard after a peer review; or
- if the country has not yet been officially peer reviewed, the score given should be considered a provisional score based on few main elements, pending the actual more detailed official peer review. Such a provisional score aims to give an impression on whether the country would be compliant with the Minimum Standard considering main elements of the relevant ToR for Peer Review. These elements are specifically stated under subheadings “Assessed Elements” of the description of each of these PIs.

Regarding tax treaty-related measures, B.A.T. uses “30% of tax treaties in force” as threshold for determining the applicable score when assessing countries that have not adopted such measures in all its tax treaties in force, as follows: (i) score “B” applies for cases where the relevant treaty measure has been initiated and fully adopted in 30% or more of the tax treaties in force, but not fully adopted in all tax treaties

© 2024 IBFD

in force (yet); and (ii) score “C” applies for cases where the relevant measure has been initiated and fully adopted in less than 30% of the tax treaties in force.

The assessment based on these criteria still applies even for cases where a country is unable to renegotiate or amend their tax treaties due to the fact that a treaty partner is not (yet) prepared to renegotiate the treaty or due to disagreement of the partner on the provision. In such cases, the assessment report should however explain, for example, that the country has the position to implement the treaty provisions and made attempts in this direction but was unable to effectively implement them in view of the position of the treaty partner (to either not engage in renegotiations or to disagree on the relevant provision).

It should be noted that a B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS Minimum Standards, which is the official assessment for members of the IF.

© 2024 IBFD

2.3.1. Key Area of Assessment B.1.: OECD/G20 BEPS Minimum Standards

Key Area of Assessment B.1. evaluates the compliance with the OECD/G20 BEPS Minimum Standards.

2.3.1.1. Performance Indicator B.1.1.

Description of Performance Indicator

Performance Indicator B.1.1. evaluates the compliance with the BEPS Minimum Standard on harmful tax practices relating to preferential tax regimes (OECD/G20 BEPS Action 5)[15]. Under this Minimum Standard, countries must ensure that preferential tax regimes meet a substance requirement, i.e. the substantial activity criterion. Accordingly, countries must identify, review and, if necessary, amend or terminate preferential tax regimes that have harmful features in line with the agreed format and protocols. In some cases, they must enact legislative and regulatory amendments to meet this commitment. Under the review process, each jurisdiction completes a standardized self-review questionnaire about the relevant regime and submits the relevant legislation to the Forum on Harmful Tax Practices (FHTP) (See endnote [i] for the FHTP criteria for assessing harmful tax regimes). *For the purpose of this Performance Indicator, a country is compliant with this Minimum Standard if:* *(1) it has identified, reviewed and, if necessary, amended or terminated preferential tax regimes that have harmful features, i.e. the necessary measures are fully implemented in the legislation and/or administrative practice as required by the FHTP; or* *(2) it does not have harmful preferential tax regimes as defined by the FHTP.* *It should be noted that the B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS minimum standards, which is the official assessment for members of the OECD/G20 Inclusive Framework on BEPS.*

Performance Indicator and score

Performance Indicator	Score
Compliance with the BEPS Minimum Standard on preferential tax regimes (OECD/G20 BEPS Action 5).	A

Preliminary considerations

As many developing and developed countries, Uganda offers tax incentives (*see* section 2.3.2.8. and Annex B.7) providing:

- preferential tax regimes, including tax holidays, established by sections 21(y), (ae), (af)) of the ITA; and
- tax exemptions for certain organizations, established by section 2(b)(b) of the ITA.

The country strategy documents express concerns as regards harmful tax competition. The DRMS, in particular, acknowledges that the pressure to match foreign regimes incentivizing off-shoring of Uganda-source income may lead policy makers to implement preferential regimes eroding the domestic tax base (*see* DRMS, at p. 61).

Uganda is not a member of the IF, and therefore has not been reviewed by the FHTP (*see* section 2.2.3).

[15] OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, available at https://doi.org/10.1787/9789264241190-en.

© 2024 IBFD

Justification for the score A given

The country is given the score A, as it is compliant with the Minimum Standard because it does not seem to have preferential tax regimes with harmful features.

Based on a first general analysis of these preferential tax regimes and considering also the position of URA and MOFPED, the Assessment Team considers that the Uganda tax incentives would not have harmful features as identified under the OECD/G20 BEPS Action 5 as these regimes do not provide for no or low effective tax rates on income from geographically mobile financial and other service activities. Despite the domestic law of Uganda providing for preferential tax regimes (in particular, tax holidays), these regimes apply to geographically non-mobile activities such as construction, manufacturing and agriculture, and require concrete investments in the country also in terms of employment.

However, the Uganda tax authorities have not yet identified and reviewed whether its preferential tax regimes have harmful features. Should the country wish to join the IF in the future, it is recommended that it exhaustively identifies, reviews and, if necessary, amends or terminates preferential tax regimes that have harmful features, and also considers these when introducing new preferential tax regimes.

2.3.1.2. Performance Indicator B.1.2.

Description of Performance Indicator

Performance Indicator B.1.2. evaluates whether the country is compliant with the BEPS Minimum Standard on exchange of information (EOI) on tax rulings (OECD/G20 BEPS Action 5)[16]. Under this Minimum Standard, countries must compulsorily and spontaneously exchange information on key risk categories of tax rulings within the scope of the transparency framework. Accordingly, countries must identify tax rulings in key risk categories and spontaneously exchange information on these tax rulings with all other jurisdictions for which those rulings may be relevant. (See endnote [ii] for the ToR for Peer Review of this Minimum Standard.)

Elements to be assessed

For the purpose of this Performance Indicator, a country is compliant with this Minimum Standard if:

(1) (i) it has fully in place the necessary legal framework for spontaneous EOI (including domestic legislation and/or administrative practice, and international agreements), i.e. for providing and/or receiving information;

(ii) it has identified, prepared and started exchanging information on tax rulings in line with the OECD/G20 BEPS Action 5 agreed format and protocols;

(iii) it complies with the requirement of confidentiality (international agreement and domestic law protection) of the information received; and

(iv) it keeps statistics on EOI under the transparency framework (about total number of spontaneous exchanges sent under the framework, by category of ruling and identifying which jurisdictions information was exchanged with); or

(2) it does not issue tax rulings within the scope of the transparency framework (e.g. because the country legally cannot or did not issue this type of ruling) as determined by the FHTP and it follows a process to certify this through an annual self-assessment questionnaire.

The above-mentioned items are the elements of the Performance Indicator to be assessed.

It should be noted that the B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS minimum standards, which is the official assessment for members of the OECD/G20 Inclusive Framework on BEPS.

Performance Indicator and score

[16] Id.

© 2024 IBFD

Performance Indicator	Score
Compliance with the BEPS Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5) – Elements (1) (i) and (iii) of the performance indicator.	**A**
Compliance with the BEPS Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5) – Elements (1) (ii) and (iv) of the performance indicator.	**D**

Preliminary considerations

The DRMS 2019/20-2023/24 has as one of its aims the strengthening of EOI; however, it only refers to the exchange of financial accounting information and of country-by-country reporting, which are stated as priority (*see* section 2.2.1.), while the EOI of tax rulings is not explicitly recognized.

The Uganda tax authorities have not yet fully analyzed the OECD/G20 BEPS Action 5 Minimum Standard, its ToR for Peer Review and the potential benefits from carrying on automatic EOI on tax rulings.

Uganda may issue private tax rulings covered by OECD/G20 BEPS Action 5. Under section 45 of the TPC, the CG (through the Business Policy Unit) may, upon application in writing by a taxpayer, issue a private ruling setting out the position of the tax authorities regarding the application of a provision in a tax law to a transaction entered into or proposed to be entered into. In principle, there is no restriction on the topics covered, so that private rulings can be issued on any type of matter, including international and domestic tax issues as well as the risk areas as defined by OECD/G20 BEPS Action 5.

According to section 45 of the TPC, private rulings are binding on URA in relation to the taxpayer to whom the ruling has been issued but are not binding on the taxpayer to whom it is issued. There is a centralized place in URA, the Business Policy Unit, that is in charge of providing these rulings.

Private rulings are not made public yet. Since 2022, URA has been publishing these rulings for internal purposes only on its Intranet, which is available to URA staff. Originally, these rulings were kept manually, and no single source/point of reference was made available. URA has been trying to collect some of these past rulings to make them available on the Intranet, but not all past rulings are yet available.

The TPD has not yet discussed EOI of tax rulings but understands that it is indeed important for the country to enhance transparency. Based on discussions during the in-country visit, it also considers that the country would benefit from receiving information from other countries on tax rulings relevant for Uganda, so it believes this is something that should be investigated and considered for the future. However, it indicated that it first needs to make tax rulings public to ensure transparency in the granting of rulings (as currently rulings are only available to URA staff).

It should also be noted that the fact that Uganda is not a member of the IF makes the EOI of tax rulings difficult in practice. Indeed, the Assessment Team is not aware of an explicit requirement of IF membership for EOI of tax rulings. However, countries are carefully scrutinized through a well-structured Peer Review

© 2024 IBFD

process before they can start receiving tax rulings, and this Peer Review is only carried out by IF members for IF members. In theory, Uganda could agree bilaterally with relevant countries EOI of tax rulings; however, this is in practice difficult as each of these countries would need to individually assess that Uganda meets all requirements.

Justification for the score A given – Elements (1) (i) and (iii) of this performance indicator

The country is given the score A, as it is considered compliant with the Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5) in what concerns elements (i) and (iii) of this performance indicator, as described below.

Element (1) (i) – necessary legal framework for EOI

Uganda has a domestic legal framework for EOI which encompasses spontaneous and automatic EOI (including domestic legislation and/or administrative practice, and international agreements).

In respect of domestic legislation, section 88(3)(a) of the ITA determines that, where an international agreement provides for spontaneous exchange of information for tax purposes, the CG shall facilitate the spontaneous EOI, as may be prescribed. Section 88(3)(b) also states that, for this purpose, the Minister may make regulations to provide for the automatic exchange of information for tax purposes. In addition, section 47(2)I of the TPC indicates that the confidentiality rule does not prevent the disclosure of information or any document to the competent authority of the government of another country with which Uganda has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement. It is thus possible, under domestic law, to exchange information when an international agreement allowing this exchange is in force and effective.

Regarding the administrative framework, the competent authority is MOFPED, which further delegates to the CG, within URA. The EOI Unit within URA, which is operational since 2016, is in charge of dealing with requests of information from other countries and requests from Uganda to other countries. This Unit is part of the Intelligence under the Tax Investigations Department. When an auditor/investigator needs information on a taxpayer, they follow the internal procedure/guidelines. Accordingly, upon a request, a committee assesses the matter and decides on whether to make use of EOI.

Regarding the international framework, the following assistance agreements (covering EOI) are currently effective:
- OECD Mutual Administrative Assistance in Tax Matters (1 September 2016 – effective (internationally) since 1 January 2017 and ratified on 29 June 2023)[17] - the Convention on Mutual Administrative Assistance in Tax Matters (Implementation) Act (2023), published on 29 June 2023, gives force of law in Uganda to the Convention on Mutual Administrative Assistance in Tax Matters; and
- ATAF Mutual Assistance Agreement (17 February 2014 – effective since 23 September 2017).

In addition, all tax treaties signed by Uganda that are in force include an EOI provision generally following the provisions of the OECD Model Convention on EOI (on the Uganda treaty network, *see* Annexes B.2. and B.3.).

[17] https://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf (accessed on 21 April 2023)

© 2024 IBFD

It is also part of the strategy plans of Uganda to expand the EOI network (*see* sections 2.2.1. and 2.2.2.), although the EOI specifically on tax rulings is not directly mentioned (as opposed to exchange of financial account information and exchange of CbC reports, which are expressly referred to in the strategy documents).

Therefore, if the country were to spontaneously exchange information on tax rulings, it would have the necessary legal framework in place for this purpose.

Element 1 (ii) – Confidentiality

The country has in place both international agreements and domestic law protection, as described below.

Regarding international agreement protection, Uganda has assistance agreements and tax treaties covering EOI that provide for confidentiality of the information received (*see* above under element (i)).

Regarding domestic law protection, section 47 of TPC deals with confidentiality of information. According to section 47(1), as a rule, tax officers shall regard as secret and confidential all information and documents received in performance of their duties. The fact that this rule covers *all* information and documents received means it is considered broad enough to cover also information received from other countries. Indeed, URA confirmed that this rule covers also information received from other countries. Also, section 47(2)(e) indicates that this rule does not prevent the disclosure of information or any document to the competent authority of the government of another country with which Uganda has entered into an agreement for the avoidance of double taxation or for the EOI, to the extent permitted under that agreement.

Section 55 of the TPC also indicates that the breach of confidentiality is an offence for which a fine of Ugandan shilling (UGX) 2 million is applicable.

Concerning administrative practices, when a person becomes an employee of URA, they need to sign an administrative oath of secrecy that is kept in their personal files. The tax authorities also confirmed that the EOI Unit of URA is very strict with information received. They also provide training on this matter to officers and offer guidance on request.

Therefore, the Assessment Team concludes that if the country were to spontaneously exchange information on tax rulings, it would have in place the requirement of confidentiality. It should be noted, however, that this is subject to the actual outcome by the IF Peer Review.

Justification for the score D given – Elements (1) (ii) and (iv) of this performance indicator

The country is given the score D for elements (ii) and (iv) of this performance indicator as measures to comply of the Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5) have not been analyzed by the country (yet), as described below.

Element (ii) – identifying, preparing, and exchanging information on tax rulings

Uganda has not yet fully analyzed the OECD/G20 BEPS Action 5 Minimum Standard, including the particular requirements concerning identification, preparation and the actual exchange of information on tax

© 2024 IBFD

rulings in line with the OECD/G20 BEPS Action 5 agreed format and protocols. Therefore, no identification, preparation or exchange of tax rulings has so far been done. The TPD has not yet discussed EOI of tax rulings but understands that it is indeed important for the country to enhance transparency (*see* above preliminary considerations). Indeed, although the expansion of the EOI network is part of the strategy plans of Uganda, there is no direct reference to the EOI on tax rulings in the strategy documents (*see* above preliminary considerations and sections 2.2.1. and 2.2.2.).

Element (i) – keeping statistics on EOI under the transparency framework

Uganda has not yet fully analyzed the OECD/G20 BEPS Action 5 Minimum Standard, including the requirement of keeping statistics on the total number of spontaneous exchanges sent under the framework, by category of ruling, and on the jurisdictions with which information on tax rulings was exchanged.

Nevertheless, during the interviews, URA expressed that this could easily be achieved as it has recently implemented a detailed database on the EOI, where statistics are kept on type of request, information requested, legal basis, timeline, relevant jurisdictions, and competent authority; however, this database does not include statistics specifically related to EOI regarding tax rulings as it is not implemented.

2.3.1.3. Performance Indicator B.1.3.

Description of Performance Indicator

Performance Indicator B.1.3. evaluates whether the country is compliant with the Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6).[18] *Under this Minimum Standard, countries must adopt specific anti-abuse provisions in their tax treaties to counter treaty abuse, especially treaty shopping which results in double non-taxation or other unjustified treaty benefits. (See endnote* [iii] *for the ToR for Peer Review of this Minimum Standard.)*

Elements to be assessed

For the purpose of this Performance Indicator, a country is considered compliant with this Minimum Standard if it has amended its tax treaties to adopt the anti-abuse provisions required by the Minimum Standard, which consists of two components:

(1) an express statement, generally in the tax treaty's preamble, that the contracting states do not intend to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance; and

(2) treaty provisions that will implement that common intention and that will take one of the following three forms (see article 29 of the 2017 OECD Model and the 2021 UN Model):
- *(i) the principal purpose test (PPT) rule;*
- *(ii) the PPT rule together with either the simplified or the detailed version of the limitation-on-benefits (LOB) rule; or*
- *(iii) a detailed LOB rule together with a mechanism to deal with conduit arrangements not already dealt with in tax treaties.*

Countries may choose to adopt these anti-abuse provisions either through signing the MLI or by bilaterally renegotiating their existing tax treaties, and amending domestic law where necessary. Depending on a country's constitutional system for implementing treaties, this may also require the implementation of the treaty by domestic legislation.

The above-mentioned items are the elements of the Performance Indicator to be assessed.

It should be noted that the B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS minimum standards, which is the official assessment for members of the IF.

[18] OECD, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241695-en.

© 2024 IBFD

Performance Indicator and score

Performance Indicator	Score
Compliance with the BEPS Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6).	C

Preliminary considerations

Currently, Uganda has the following nine bilateral tax treaties in force:

Countries	*Date of signature*	*Effective as from*
Denmark	14 January 2000	1 January 2002
India	30 April 2004	1 July 2005
Italy	6 October 2000	1 January 1998
Mauritius [19]	19 September 2003	1 July 2005
Netherlands[20]	31 August 2004	1 July 2007
Norway	7 September 1999	1 January 2002
South Africa	27 May 1997	1 January 2002
United Kingdom	23 December 1992	1 January 1994
Zambia	24 August 1968	1 January 1964

There are tax treaties signed by Uganda with Belgium (26 July 2007) and, based on information from the IBFD Tax Research Platform, with the United Arab Emirates (UAE) (11 June 2015), which are not in force yet.

Uganda also signed and ratified the 2010 East African Community (EAC) multilateral tax treaty; however, this treaty has not entered into force as it has not been ratified by all partner countries - in 2010, there were five EAC partner countries, three have ratified this treaty but the other two have not ratified it (i.e. Burundi and Tanzania). Meanwhile, new partner countries have joined the EAC (i.e. South Sudan and Democratic Republic of the Congo). As there have also been several changes in international tax treaty policy due to BEPS and the update of the OECD and the UN Model Conventions, the EAC partner countries have

[19] At the time this B.A.T. assessment was conducted, Uganda had concluded the renegotiation with Mauritius, but the amending protocol had not been signed yet; therefore, references to the tax treaty between Mauritius and Uganda are limited to the provisions of tax treaty in force.
[20] At the time this B.A.T. assessment was conducted, Uganda was renegotiating with the Netherlands. References to the tax treaty between the Netherlands and Uganda are limited to the provisions of tax treaty in force.

© 2024 IBFD

decided to renegotiate the treaty. The renegotiation on the EAC multilateral tax treaty was scheduled to start in April 2023.

The DRMS provides, regarding treaty anti-abuse measures, that "the increased integration of Uganda's economy with the global economy introduces significant tax risks which erode tax yields. The pursuit of investment, employment and growth opportunities has fueled tax competition and places pressure on policy makers to match various initiatives with a suite of base-eroding domestic tax incentives. This challenge is further compounded by the fact that most jurisdictions (including some of Uganda's major investment and trading partners), operate territorial tax systems, creating an incentive for off-shoring income that would ordinarily be classified as Ugandan-sourced. Recommended interventions at the international level such as the OECD/G20 BEPS actions go some way to addressing Uganda's international tax concerns…".[21] This underlines Uganda's position to adopt OECD/G20 BEPS Actions recommendations relating to tax treaties.

Further, the DRMS clearly states that there is a policy proposal to "…renegotiate all existing DTAs to bring them in line with the Uganda DTA policy… Refrain from contracting new DTAs, although if required these should be aligned to the principles of the approved DTA policy".[22]

The DRMS establishes, therefore, that the country's official position is not to negotiate new tax treaties until stock is taken of tax treaties in force, determining their costs and benefits. If a new treaty is needed, it should be negotiated in line with the country tax treaty policy and in view of international best practices in order to minimize opportunities for abuse.[23] Renegotiation of existing tax treaties has been envisaged as a must to rectify some provisions that are being used for abuses. Uganda concluded the renegotiation of its tax treaty with Mauritius, but the corresponding amending protocol has not been signed yet. Uganda is also renegotiating its tax treaty with the Netherlands.

When the DRMS stated the new tax treaty policy, a number of treaties were already being negotiated; accordingly, it was decided to conclude those negotiations, i.e. China, Korea, Türkiye and Qatar. Besides, Uganda has only initiated negotiations with Serbia.

The TPD developed the country treaty policy and country treaty model in 2015. As at that time BEPS was something very new, reportedly, the treaty model has been updated incorporating also some BEPS provisions. At the time this B.A.T. assessment was conducted, the TPD was reportedly working on a new update of the Uganda Treaty Model, which was not yet finalized and then not made available to the Assessment Team. We have no evidence that there is an official Uganda Model Tax Convention approved by Cabinet.

Nevertheless, the Assessment Team had access to a Uganda Model Convention with amendments proposed as part of the Domestic Revenue Mobilization for Development (DRM4D) project which is funded by USAID[24] (*see* Annex B.3.1.2.). Reportedly, this amended model convention is currently under evaluation by the TPD. We have analyzed this model in this report and referred to it as the "proposed DRM4D (amended) Uganda Model Convention" in our assessment concerning BEPS treaty provisions in section

---

[21] DRMS 2019/20 – 2023/24, Improving the Tax System through Tax Policy Initiatives, p. 6
[22] DRMS 2019/20 – 2023/24, Improving the Tax System through Tax Policy Initiatives, p.64
[23] DRMS 2019/20-2024/25, pp. 51, 61-64.
[24] USAID, DRM4D project. The goal of the DRM4D project is to strengthen the tax culture, increase voluntary compliance, and sustainably increase domestic revenue mobilization, thereby creating the fiscal space for public spending and investments in service delivery. DRM4D aims to accomplish: (i) tax policy strengthened, (ii) national and subnational revenue administration and compliance improved, and (iii) public-private dialogue enhanced.

© 2024 IBFD

2.3. In general, this model contains most of the provisions corresponding to the BEPS recommendations and international best practices as incorporated in the 2017 updates of the OECD Model Convention and the 2021 UN Model Convention. However, it does not incorporate some relevant provisions, for example, the PPT rule (*see* below).

Uganda is also committed to use the EAC Model Convention, which was last updated in June 2022. The EAC Model is to be used for negotiations with third countries. EAC partner countries may therefore negotiate treaties with third countries but without granting more favourable benefits than those stated in the EAC Model (minimum threshold). In general, this model contains most, if not all, of the provisions corresponding to the BEPS recommendations and international best practices as incorporated in the 2017 updates of the OECD Model Convention and the 2021 UN Model Convention. We referred to this model in our assessment concerning BEPS treaty provisions in section 2.3.

It is worth noting that Uganda was also one of the participating countries in the development of the 2019 ATAF Model Convention, which also incorporates most of the provisions corresponding to the BEPS recommendations and international best practices as incorporated in the 2017 updates of the OECD and the UN Model Conventions.

Justification for the score given C

The country is given score C, as there is a country position on adopting the Minimum Standard and measures to adopt the Minimum Standard have been initiated, but Uganda has not yet adopted it in any of the tax treaties in force.

The country has a position to adopt the Minimum Standard. The DRMS states that there is a government position and policy proposal to ensure that any new international tax agreements and existing tax treaties minimize opportunities for abuse and that they are aligned to international best practices. Further, the DRMS clearly refers to recommended interventions at the international level such as the OECD/G20 BEPS Actions to address Uganda's international tax evasion and tax avoidance concerns through tax treaties. It underlines the need to renegotiate all existing tax treaties to bring them in line with the Uganda tax treaty policy and, in principle, to refrain from concluding new tax treaties but, if required, the new tax treaties should be aligned to the principles of the approved tax treaty policy and international best practices (*see* section 2.2.2.).[25]

Uganda aims to adopt these standards by bilateral (re)negotiations and multilateral (re)negotiations in the context of the EAC. The proposed DRM4D (amended) Uganda Model Convention contains the Minimum Standards, i.e. the new tax treaty preamble and a simplified LOB rule (it does not contain the PPT rule though). The EAC Model Convention for negotiations between EAC member countries and non-EAC member countries contains the Minimum Standards, i.e. the new tax treaty preamble and the PPT and a detailed LOB rule.

Element (1): new tax treaty preamble

[25] DRMS 2019/20 – 2023/24, Improving the Tax System through Tax Policy Initiatives, pp. 61-64

© 2024 IBFD

Although the country has the position to adopt in its existing and new tax treaties the new tax treaty preamble precluding contracting states from creating opportunities for non-taxation or reduced taxation as well as treaty shopping, none of the nine tax treaties in force have yet incorporated this Minimum Standard.

Elements (2) (i), (ii) and (iii): treaty anti-abuse rules

None of the nine tax treaties in force have yet incorporated:

- the principal purpose test (PPT) rule, or
- the PPT and either simplified or detailed limitation on benefits (LOB) rules, or
- detailed LOB rules with a mechanism to deal with conduit arrangements.

Nevertheless, Uganda is aiming to incorporate these rules in two of the existing tax treaties in force (renegotiations with the Netherlands and Mauritius); however, such negotiations are not yet concluded. Uganda is also aiming to adopt these standards in the tax treaties it is negotiating with Qatar, Türkiye and the UAE.

Therefore, it can be concluded that Uganda has the position to adopt the Minimum Standard on preventing tax treaty abuse in its existing and new tax treaties, it has initiated measures, but not yet adopted them in any treaty in force.

2.3.1.4. Performance Indicator B.1.4.

Description of Performance Indicator

Performance Indicator B.1.4. evaluates whether the country is compliant with the BEPS Minimum Standard on CbC reporting (OECD/G20 BEPS Action 13)[26]. Under this BEPS Minimum Standard, countries must automatically exchange the CbC reports prepared and submitted in their country by MNEs meeting the requirements to have to do so, with all required jurisdictions in line with the OECD/G20 BEPS Action 13 agreed format and protocols. (See endnote [iv] for the ToR for Peer Review of this Minimum Standard.)

Countries will meet this standard by establishing the necessary domestic legal framework for CbC reporting, i.e. implementing an obligation for relevant MNEs to file CbC reports following standard templates and ensuring that CbC reporting information can be exchanged between tax administrations (i.e. for providing and/or receiving information), on the basis of confidentiality and appropriate use of the information received, pursuant to an international instrument. International agreements may be tax treaties, tax information exchange agreements, or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. To operationalize the exchange of CbC reporting information, countries generally need to introduce domestic legislative changes and sign bilateral competent authority agreements or the Multilateral Competent Authority Agreement.

Elements to be assessed

For the purpose of this Performance Indicator, a country is compliant with this BEPS Minimum Standard if in accordance with the ToR:

(1) (i) it has established the necessary domestic legal and administrative framework for providing and receiving CbC reporting;
(ii) it has established an EOI framework sufficient for providing and receiving CbC reporting (agreements for automatic EOI and competent authority agreements); and
(iii) it complies with the requirement of confidentiality (international agreement and domestic law protection) and appropriate use (legal or administrative measures) of CbC reports; or

[26] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, available at https://doi.org/10.1787/9789264241480-en.

© 2024 IBFD

(2) there are no MNEs required to file CbC reports headquartered in that country (i.e. there are no MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of EUR 750 million or more), and the country follows a yearly certification process for confirming that there are no such MNE groups and documents how that fact is known for the year in question.

The above-mentioned items are the elements of the Performance Indicator to be assessed.

It should be noted that the B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS minimum standards, which is the official assessment for members of the IF.

Performance Indicator and score

Performance Indicator	Score
Compliance with the BEPS Minimum Standard on Country-by-Country (CbC) Reporting (OECD/G20 BEPS Action 13) – Element (1) (i), part of Element (1) (iii) (part concerning appropriate use) and Element (2) of the performance indicator.	C
Compliance with the BEPS Minimum Standard on Country-by-Country (CbC) Reporting (OECD/G20 BEPS Action 13) – Elements (1) (ii) and part of Element (iii) (part concerning confidentiality)	A

Preliminary considerations

The DRMS 2019/20 – 2023/24 states that there is poor transparency and weak access to information on taxpayers' transactions, which hampers enforcement, especially countering cross-border tax evasion, and illicit financial flows. So, the DRMS has as one of its aims the strengthening of EOI: through ensuring that the government satisfies all the criteria for obtaining information available under the country-by-country reporting requirements of the BEPS Project and also enhancing the sharing of information within Uganda and between tax jurisdictions to facilitate mutual support. Including strengthening the platform for EOI by pursuing agreements to facilitate the automatic exchange of financial accounting information, country-by-country reporting by MNEs, tax examinations abroad, mutual assistance procedures, and assistance in recovery[27] (*see also* sections 2.2.1. and 2.2.2.).

However, it should be noted that the fact that Uganda is not a member of the IF makes it difficult in practice to implement CbC reporting. Indeed, the Assessment Team is not aware of an explicit requirement of IF membership for receiving CbC reports. However, countries are carefully scrutinized through a well-structured Peer Review process before they can start receiving CbC reports, and this Peer Review is only carried out by IF members for IF members. In theory, Uganda could agree bilaterally with relevant countries to exchange CbC reports; however, this is in practice difficult as each of these countries would need to individually assess that Uganda meets all requirements.

The Uganda tax authorities have not yet started to implement the country strategy. They have not yet fully analyzed the OECD/G20 BEPS Action 13 Minimum Standard, and its ToR for Peer Review. Based on

[27] Domestic Revenue Mobilization Strategy For Uganda 2019/20 – 2023/24 (p. 64-65)

© 2024 IBFD

discussions during the in-country visit, it seems that both URA and TPD were not fully aware of the DRSM strategy as they consider that the country would benefit from receiving country-by-country reports from other countries, so this is something that should be investigated and considered for the future.

Regarding the requirements for CbC reporting, Uganda, in principle, has international information exchange mechanisms, as its tax treaty network generally follows the provisions of the OECD Model on EOI (*see* Annexes B.2. and B.3. for further information on provisions in tax treaties in force). In addition, Uganda has ratified the Convention on Mutual Administrative Assistance in Tax Matters (*see* section 2.3.1.2., element (1) necessary legal framework for spontaneous EOI).

Uganda also has the necessary domestic legislation to enforce EOI in section 88(3a) of the Income Tax Act, which provides that "where an international agreement provides for automatic exchange of information for tax purposes, the Commissioner shall facilitate the automatic exchange of information, as may be prescribed". The Minister may make regulations to provide for exchange of information for tax purposes.

However, Uganda has not in place the domestic legal and administrative framework for CbC reporting (i.e., model rules provided by the OECD/G20 BEPS Action 13 Final Report which Uganda would need to enact as domestic legislation), but has in place an EOI framework and also legislation to enforce legal protection of the confidentiality of reported information (*see* section 2.3.1.2. for further information on these last two aspects).

Justification for the score C given – Element (1) (i), part of (1) (iii) (part concerning appropriate use) and Element (2), of the performance indicator

The country is given score C, as there is a country position on adopting the Minimum Standard, but it has not yet initiated relevant measures. This is based on the following considerations:

Although, the Uganda tax authorities have not yet fully analyzed the OECD/G20 BEPS Action 13 Minimum Standard requirements and its ToR for Peer Review, there is a clear country position on adopting it as stated in the DRSM.

Generally, there are two options in respect of being compliant with this BEPS Minimum Standard: (i) a country may be "fully compliant" with the BEPS Minimum Standard (*see above* element (1) of this performance indicator); and (ii) a country may also be compliant if there are no MNEs required to file CbC reports headquartered in that country and the country carries out the certification process, in which case the country may not receive CbC reports (opting-out of receiving CbC reports) (*see above* element (2) of this performance indicator).

Should Uganda join the IF it could follow the opting-out version to be compliant with this BEPS Minimum Standard, as it does not have any MNE groups that would be subject to CbC reporting. However, for this, Uganda would still need to implement the yearly certification process to confirm this fact. If this certification were made, Uganda would not be subject to further peer review for the year in question. In this scenario, Uganda would be compliant, but it would not receive CbC reports from other jurisdictions. In case Uganda would still want to receive CbC reports under this type of compliance (the opting-out version), it would then need to comply with the BEPS Minimum Standard (*see above* element (1) of this performance indicator).

Based on discussions during the in-country visit, both URA and TPD have the view that the country would benefit from receiving CbC reports from other countries.

© 2024 IBFD

In order for Uganda to be fully compliant with the BEPS Minimum Standard and, therefore, also be able to receive CbC reports for its risk assessment processes, the country would need to introduce all CbC reporting obligations (as this is a precondition for receiving CbC reports).[28]

If Uganda were to choose to be fully compliant, it would need to implement the measures summarized in element (1) of this performance indicator. In this regard:

Element (1) (i) Domestic legal and administrative framework

Uganda does not have in place the model domestic legal and administrative framework for CbC reporting, including IT requirements, since it has neither implemented the CbC report filing obligation according to specific template and deadlines nor provided for enforcement provisions and monitoring relating to CbC reporting's effective implementation. To meet this requirement, Uganda would need to introduce, as part of its domestic legislation, the model rules provided by the OECD/G20 BEPS Action 13 Final Report.

Element (1) (iii) Appropriate use of country-by-country reports

Uganda would need to ensure that it meets the requirement on appropriate use of the information by putting in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through EOI or by way of local filing are only used for specific purposes (i.e. that reports can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis, and that CbC reports are not used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis, nor used on their own as conclusive evidence that transfer prices are or are not appropriate, nor used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income).

Justification for the score A given – Elements (1) (ii) and part of (iii) (part concerning confidentiality)

The country is given the score A, as it is considered compliant with the Minimum Standard on country-by-country reporting (OECD/G20 BEPS Action 13) in what concerns elements (1) (ii) and (iii) of this performance indicator, as described below. It should be noted, however, that this is subject to the actual outcome by the IF Peer Review.

Element (1) (ii) Necessary legal framework for EOI

Uganda has, in principle, a legal framework for EOI which encompasses automatic EOI, including domestic legislation and/or administrative practice, and international agreements. Indeed, besides tax treaties in force, Uganda has also ratified the Convention on Mutual Administrative Assistance in Tax Matters (MAAC) (For further details, *see* section 2.3.1.2. (Element (1) (i) necessary legal framework for spontaneous EOI)).

[28] Available at http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

© 2024 IBFD

Element (1) (ii) Confidentiality

In principle, the country has legislation to enforce legal protection of the confidentiality of received information as it has in place both international agreements and domestic law protection. For further details on this, *see* section 2.3.1.2. (Element (1) (ii) necessary legal framework for spontaneous EOI).

However, it should be noted that the Global Forum conducts expert assessments of confidentiality and data safeguards with respect to the standard on AEOI. The CbC Reporting Peer Review relies on the work of the Global Forum on this aspect of its review. URA has stated that Uganda has approved all requirements for AEOI and, accordingly, it would soon start exchanging information. Indeed, according to the Global Forum publicly available information, Uganda is a member of the Global Forum and has committed to start AEOI in 2023. However, the Global Forum has not yet acknowledged that the country has met the necessary requirements.

2.3.1.5. Performance Indicator B.1.5.

Description of Performance Indicator

Performance Indicator B.1.5. evaluates whether a country is compliant with the BEPS Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14)[29]. Under this Minimum Standard, countries must offer and improve the resolution of tax treaty-related disputes between the contracting parties, and ensure the efficiency of the mutual agreement procedure (MAP) and the timeliness of its resolution. (See endnote [v] for the ToR for Peer Review of this Minimum Standard.)

This BEPS Minimum Standard consists of 21 elements, as elaborated in the Action 14 Peer Review ToR, that assess a jurisdiction's legal and administrative frameworks, and the practical implementation of those frameworks, to determine how the dispute resolution mechanisms (i.e. the MAP) perform in four key areas: (i) preventing disputes; (ii) availability of and access to the MAP; (iii) resolution of MAP cases; and (iv) implementation of MAP agreements.

Elements to be assessed

For the purpose of this Performance Indicator, a country is compliant with this Minimum Standard if it complies with its 21 elements (as elaborated in the Action 14 Peer Review ToR), which, for the purposes of this Performance Indicator, are divided as follows:

(1) Tax treaty measures: In their tax treaties, countries must include article 25 (1), (2) and (3) of the OECD Model (2017). Countries may choose to meet the tax treaty-related requirements by signing the MLI and/or bilaterally renegotiating their existing tax treaties. Alternatively, regarding article 25(1), first sentence, where the tax treaty does not permit a MAP request to be made to either Contracting State and the competent authority that received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process that allows the other competent authority to provide its views on the case. Further, regarding article 25(2), second sentence, countries may be willing to accept alternative treaty provisions that limit the time during which a Contracting State may make a transfer pricing adjustment (Action 14 Peer Review ToR: Elements A.1, B.1, B.2, B.7, C.1 and D.3); and

(2) Domestic legal and administrative frameworks, and the practical implementation of these and of the tax treaty framework (all other elements of the Action 14 Peer Review ToR not mentioned in (1)). These elements are looked at in a more general way than in the Peer Review.

The above-mentioned items are the elements of the Minimum Standard to be assessed in the context of this assessment tool.

It should be noted that the B.A.T. cannot in any way replace or be considered as part of the peer review process of the BEPS minimum standards, which is the official assessment for members of the IF.

[29] OECD (2015), Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241633-en.

© 2024 IBFD

Performance Indicator and score

Performance Indicator	Score
Compliance with the BEPS Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14) – Tax treaty measures – Element (1) of the performance indicator.	C
Compliance with the BEPS Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14) – Domestic legal and administrative frameworks, and practical implementation of MAP – Element (2) of the performance indicator.	D

General considerations

URA reported that the country, so far, has dealt with two MAP cases only.

Taxpayers may submit MAP requests to the competent authority, which is, in the majority of cases, "the Minister of Finance or his authorized representative" (with the exception of the tax treaties with South Africa, under which the competent authority is the "Commissioner for the Internal Revenue Department" of URA, i.e. the Commissioner General (CG), and Zambia, where there is no reference to "competent authority" but to "taxation authorities" without further specification). Concretely, the Minister of Finance delegates this authority to the CG. There is no specific procedure to be followed by taxpayers. In practice, taxpayers need to write directly to the CG.

With respect to the OECD/G20 BEPS Action 14 Minimum Standard, the tax authorities do not seem to be aware of all its elements, which involve specific tax treaty provisions, domestic law provisions, administrative regulations and practical implementation of MAP. Based on the interviews with URA and MOFPED, tax treaty dispute resolution is not considered a priority for Uganda.

Justification for the score given C – Tax treaty measures – Element (1) of the performance indicator

The country is given score C, as there is a country position on adopting the Minimum Standard, but Uganda has not yet fully adopted it in any of its tax treaties in force.

The strategy documents do not state a government position concerning dispute resolution via MAPs (*see* section 2.2.2.). However, the EAC Model Convention for negotiations between EAC member countries and non-EAC member countries contains the Minimum Standards, i.e. article 25, paragraphs (1), (2) and (3) of the 2017 OECD Model Convention. The proposed DRM4D (amended) Uganda Model Convention also contains these provisions. Uganda aims to adopt these provisions by bilateral (re)negotiations and multilateral renegotiation in the context of the EAC.

Despite the country's position, none of Uganda's tax treaties in force fully contain the Minimum Standard. In particular:

© 2024 IBFD

- Article 25(1) of the 2017 OECD Model Convention: None of the treaties contain this provision (MAP request to be made to *either* contracting state) and tax authorities have not considered the alternative bilateral consultation or notification process;
- Article 25(2) of the 2017 OECD Model Convention: The treaties in force with Denmark, India, Mauritius, Netherlands, Norway, South Africa contain this provision. The treaties with Italy, United Kingdom and Zambia only partially follow this model provision; and
- Article 25(3) of the 2017 OECD Model Convention: The treaties with Denmark, India, Mauritius, Netherlands, Norway, South Africa and United Kingdom contain this provision. The treaties with Italy and Zambia only partially follow this model provision.

It should be noted, however, that all tax treaties in force were signed before the OECD/G20 BEPS Project.

Justification for the score given D – Domestic legal and administrative frameworks, and practical implementation of MAP – Element (2) of the performance indicator

The country is given score *D*, as the different elements of the OECD/G20 BEPS Action 14 Minimum Standard have not been analyzed by the country (yet).

The country does not yet have the domestic legislation and administrative framework required by the Minimum Standard. It seems that the tax authorities have not yet fully analyzed the various requirements of OECD/G20 BEPS Action 14 Minimum Standards. Reportedly, the issue is considered relevant, but it does not have priority due to the low number of disputes, as taxpayers would rather settle the dispute with URA instead of requiring a MAP.

© 2024 IBFD

2.3.2. Key Area of Assessment B.2: Measures other than the OECD/G20 BEPS Minimum Standards

Key Area of Assessment B.2. deals with the adoption of measures, other than the OECD/G20 BEPS Minimum Standards, to deal with selected OECD/G20 BEPS issues and other BEPS issues.

2.3.2.1. Performance Indicator B.2.1.

Description of Performance Indicator

Performance Indicator B.2.1. evaluates whether the country has adopted recommendations for limiting base erosion involving interest deductions and other financial payments provided by OECD/G20 BEPS Action 4 [30] as updated in 2016.[31] ***Elements to be assessed*** *For the purpose of this Performance Indicator, best practices recommended by OECD/G20 BEPS Action 4 are listed below under (1), (3) and (4), while other optional best practices described by Action 4 are listed below under (2), (5), (6), (7) and (8):* (1) *a benchmark rule that provides for a fixed-ratio rule limiting an entity's deductions for net interest expense to a percentage of its earnings before interest, taxation, depreciation and amortization (EBITDA);* (2) *a rule that provides for a group ratio rule allowing an entity to deduct net interest expense up to its multinational group's net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio (Optional);* (3) *a rule that provides for targeted interest limitation rules to restrict interest deductions on payments made under specific transactions or arrangements;* (4) *a rule that provides for specific interest limitation rules for banks and insurance companies;* (5) *a rule that provides for a monetary threshold of net interest expense to exclude low-risk entities from the application of the limitation of interest deductibility rules (Optional);* (6) *a rule that provides for the carry-forward of disallowed interest (Optional);* (7) *a rule that provides for the carry-forward of unused interest deduction capacity (Optional); and* (8) *a rule that provides for the carry-back of disallowed interest (Optional).* *Out of the above-mentioned items, elements (1), (3) and (4) are the elements of the Performance Indicator that will each be assessed. The country has fully adopted a recommendation if the relevant provision has been fully adopted by its legislation.*

Performance Indicator and score

Performance Indicator	Score
Adoption of recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4) – Element (1) of the performance indicator.	B

[30] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project ch. 1 (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241176-en.

[31] *OECD (2016), Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264268333-en.*

© 2024 IBFD

Adoption of recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4) – Element (3) of the performance indicator	**A**
Adoption of recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4) – Element (4) of the performance indicator	**Other**

Justification for the score given B – Element (1) of the performance indicator

As regards Rule (1), the country is given score B since the Action 4 recommendations have been adopted by the legislation but with deviations.

Under section 25(3), (4) and (5) of the ITA, taxpayers who are members of a group may deduct gross interest expenses up to 30% of their earnings before interest, tax, depreciation and amortization (EBITDA). Disallowed interest may be carried forward up to three years. This rule was implemented in 2018, also following a study regarding the negative incidence of the previous thin-cap rules on the effective tax rate. In the attempt to remedy the lack of effectiveness of the previous thin-cap rules, Uganda considered implementing the Action 4 recommendations.

In principle, this EBITDA rule follows the OECD/G20 BEPS Action 4 recommendations; however, it applies to gross interest and not to net interest (i.e., interest expenses in excess of interest income). This constitutes a deviation from the Action 4 recommendations, which suggest restricting the deductibility of net interest instead to avoid double taxation issues. This is the main reason for a score B instead of A. TPD had already identified this issue but it is still studying whether to propose an amendment in this sense.

During the interviews with URA, two additional issues concerning the rule have been highlighted, which may be taken into account for possible amendments of the rule:

1) URA considers that the EBITDA rule threshold ultimately favours asset rich businesses due to the domestic regime of accelerated capital allowance. Accordingly, it considers that an EBIT-based threshold may be more suitable to measure taxable earnings (URA has recently lost a case in court due to this issue – *Rwenzori Bottling Co. Ltd v. URA*, TAT 21/2021) and it is currently discussing with TPD possible amendments in this sense. It should be noted that the EBIT-based threshold is in principle in line with the OECD/G20 BEPS Action 4 recommendations; and
2) URA reported that the domestic formulation of the Action 4 recommendations leads specifically to the exclusion of rental income and rental businesses. This is due to the fact that the EBITDA rule applies to gross income; however, under Uganda domestic law, rental income is excluded from gross income and subject to a specific schedular tax regime. However, TPD considers that this does not represent an issue, as the domestic law prescribes a specific deduction cap for rental income that is even more restrictive than the EBITDA-based limitation.

Justification for the score given A – Element (3) of the performance indicator

As regards Rule (3), the country is given score A, as Action recommendations have been fully adopted by the legislation.

© 2024 IBFD

Rule (3) recommends the adoption of targeted rules restricting interest deductions on payments made under specific transactions or arrangements aimed, for instance, at artificially reducing the net interest expense subject to the fixed-ratio rule or increasing the level of net third-party interest expense under the group ratio rule. For this purpose, a general anti-avoidance rule (GAAR) is identified as a suitable solution.

Based on the interviews with URA and TPD, it seems that the country has not specifically analyzed the recommendations under Rule (3). However, the domestic law provides for a rule equivalent to a GAAR under section 91 of the ITA. Therefore, the domestic system is per se compliant with the Action recommendations, as section 91 may be used to target the above-described arrangements.

Justification for the score given Other – Element (4) of the performance indicator

As regards Rule (4), the country is given score Other, as there is a country position not to adopt these OECD/G20 BEPS Action 4 recommendations.

Under the domestic law, banks and insurance companies are excluded from the EBITDA rule. The main reasons for the exclusion are that banks need debts to survive and operate in a highly regulated sector, therefore it is unlikely to have problems of base erosion with these entities.

2.3.2.2. Performance Indicator B.2.2.

Description of Performance Indicator

Performance Indicator B.2.2. evaluates whether the country has adopted recommendations (anti-abuse treaty provisions) for preventing the granting of treaty benefits in inappropriate circumstances provided by OECD/G20 BEPS Action 6 (other than the Minimum Standard). For the recommendations, see the OECD/G20 BEPS Action 6 Final Report.[32]

Elements to be assessed

For the purpose of this Performance Indicator, the OECD/G20 BEPS Action 6 recommendations are:

(1) *an anti-abuse rule to prevent dividend transfer transactions (transactions through which a taxpayer tries to access the lower tax treaty rate applicable to dividends) (see article 10(2) of the 2017 OECD Model and 2021 UN Model);*

(2) *an anti-abuse rule concerning capital gains from the alienation of shares or interests of entities deriving their value principally from immovable property (see article 13(4) of the 2017 OECD Model and 2021 UN Model);*

(3) *an anti-abuse rule to protect the source state from having to grant treaty benefits where income obtained by a PE situated in a third jurisdiction is taxed at a lower rate or is not taxed in that jurisdiction and the income of that PE is exempt from tax in the State of residence of the enterprise having the PE (see article 29(8) of the 2017 OECD Model and 2021 UN Model);*

(4) *a tiebreaker rule for determining the treaty residence of dual-resident entities other than individuals (the competent authorities of the contracting states shall endeavor to determine by mutual agreement the contracting state of which such a person shall be deemed to be a resident) (see article 4(3) of the 2017 OECD Model and 2021 UN Model); and*

(5) *a "saving clause" rule that confirms the contracting states' right to tax their residents, notwithstanding the provisions of the treaty, except those, such as the rules on relief of double taxation, that are clearly intended to apply to residents (see article 1(3) of the 2017 OECD Model and 2021 UN Model).*

The above-mentioned items are the elements of the Performance Indicator that will each be assessed.

The country has fully adopted a recommendation if the relevant provision has been fully adopted in its tax treaties.

[32] OECD (2015), *supra* n. 18, at ch. A.

© 2024 IBFD

Performance Indicator and score

Performance Indicator	Score
Adoption of recommendations for preventing the granting of treaty benefits in inappropriate circumstances (OECD/G20 BEPS Action 6) – anti-abuse rules not Minimum Standard.	C

Preliminary Considerations

Currently, Uganda has nine tax treaties in force. For a brief description of the Uganda strategy concerning tax treaties as depicted in the DRMS, tax treaty policy, country treaty model(s) and treaties in force, signed, and under (re)negotiations, *see* section 2.3.1.3.

Justification for the score given C

The country is given score C because there is a country position on adopting Action 6 recommendations and measures to adopt these recommendations have been initiated, but Uganda has fully adopted them in less than 30% of the tax treaties in force (*see* which treaties further below).

In addition to the DRMS strategy regarding adopting treaty anti-abuse measures, specifically, the OECD/G20 BEPS Actions recommendations (*see* section 2.3.1.3.):

The proposed DRM4D (amended) Uganda Model Convention contains the following Action 6 recommendations:

- Element (1): Article 10(2) an anti-abuse rule to prevent dividend transfer transactions.
- Element (4): Article 4(3) a tiebreaker rule for determining the treaty residence of dual-resident entities other than individuals through a MAP.
- Element (5): Article 1(3) a “saving clause” rule that confirms the contracting states’ right to tax their residents, notwithstanding the provisions of the treaty, except those, such as the rules on relief of double taxation, that are clearly intended to apply to residents.

The proposed DRM4D (amended) Uganda Model Convention does not contain the following Action 6 recommendations:

- Element (2): Article 13(4) concerning the anti-abuse rule on capital gains from the alienation of shares or interests of entities deriving their value principally from immovable property. The proposed DRM4D (amended) Uganda Model Convention provides a similar rule but restricts its scope of application to businesses engaged in managing immovable properties.
- Element (3): Use of PE in third state (article 29(8) of the 2017 OECD Model and 2021 UN Model) is not included in the proposed DRM4D (amended) Uganda Model Convention.

However, the EAC Model for negotiations between EAC member countries and non-EAC member countries contains all the above-mentioned Action 6 recommendations.

© 2024 IBFD

Therefore, when considering both Models, there is a position to incorporate the Action 6 recommendations into existing and future tax treaties. It would be helpful for Uganda to align both Models concerning these provisions.

However, these recommendations have been incorporated in less than 30% of the tax treaties in force:

- Elements (1), (3) and (5): Currently none of the nine Uganda tax treaties in force has adopted these treaty anti-abuse rules.
- Element (2): Currently none of the nine Uganda tax treaties in force has adopted this treaty anti-abuse rule. Only the tax treaty with India provides for a rule that generally follows the pre-2017 UN Model.
- Element (4): Only the tax treaty with South Africa provides only for MAP as a tiebreaker. The Uganda tax treaty with India has provided first for place of effective management and then for MAP as a tie-breaker.

Uganda has been striving to incorporate some of the above-mentioned anti-treaty abuse rules in its existing tax treaties through renegotiations, for instance, with Mauritius and the Netherlands and in its new or ongoing tax treaty negotiations with, for instance, Qatar, Türkiye and the UAE.

Therefore, Uganda has the position to adopt these Action 6 recommendations and measures to adopted them have been initiated but have been fully adopted only in less than 30% of the tax treaties in force.

2.3.2.3. Performance Indicator B.2.3.

Description of Performance Indicator

Performance Indicator B.2.3. evaluates whether the country has adopted the recommendations (i.e. anti-abuse treaty provisions) for preventing the artificial avoidance of PE status provided by OECD/G20 BEPS Action 7. For the recommendations, see the OECD/G20 BEPS Action 7 Final Report.[33]

Elements to be assessed

For the purpose of this Performance Indicator, the Action 7 recommendations are:

(1) amendments to the dependent-agent test (including independent agents) to avoid the artificial avoidance of PE status through commissionaire arrangements and similar strategies (see article 5(5) and (6) of the (2017) OECD Model, or article 5(5) and (7) of the (2021) UN Model);

(2) amendments to the specific-activity exemptions to avoid artificial avoidance of PE status (see article 5(4) of both the (2017) OECD Model and the (2021) UN Model);

(3) a specific rule to prevent fragmentation of activities between closely related parties (see article 5(4.1) of both the (2017) OECD Model and the (2021) UN Model); and

(4) a specific rule to prevent splitting-up of contracts (see PPT rule under article 29 of the 2017 OECD Model).

The above-mentioned items are the elements of the Performance Indicator that will each be assessed.

The country has fully adopted a recommendation if the relevant provision has been fully adopted in its tax treaties.

Performance Indicator and score

[33] OECD, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project chs. A-C (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241220-en.

© 2024 IBFD

Performance Indicator	Score
Adoption of recommendations for preventing the artificial avoidance of PE Status (OECD/G20 BEPS Action 7).	C

Preliminary Considerations

Currently, Uganda has nine tax treaties in force. For a brief description of the Uganda strategy concerning tax treaties as depicted in the DRMS, tax treaty policy, country treaty model(s) and treaties in force, signed, and under (re)negotiations, *see* section 2.3.1.3.

Justification for the score given C

The country is given score C as there is a country position to adopt Action 7 recommendations and measures to adopt Action recommendations have been initiated but have been fully adopted in less than 30% of the tax treaties in force.

Section 78(a) of the Uganda ITA defines the term "branch" in the context of PE under tax treaties. However, the ITA does not have a provision on preparatory or auxiliary activities as stipulated under article 5(4) of the OECD and UN Model Conventions.

In addition to the DRMS strategy regarding adopting treaty anti-abuse measures, specifically, the OECD/G20 BEPS Actions recommendations (*see* section 2.3.1.3.), the proposed DRM4D (amended) Uganda Model Convention contains the following Action 7 recommendations:

– Element (1): Article 5(5) and 5(6) amendments to the dependent-agent test (including independent agents) to avoid the artificial avoidance of PE status through commissionaire arrangements and similar strategies;
– Element (2): Article 5(4) amendments to the specific-activity exemptions to prevent artificial avoidance of PE status; and
– Element (3): Article 5(4.1) a specific rule to prevent fragmentation of activities between closely related parties.

This model does not provide for a specific rule to prevent splitting-up of contracts as indicated in element (4) of this performance indicator (this Model also does not include the PPT rule, which may be used to deal with these types of abuse). However, the latest EAC Model Convention which could also be used as Uganda Model for negotiations with non-EAC member countries incorporates all these rules i.e. rules corresponding to elements (1) to (4) of this performance indicator, as recommended by Action 7. There is indeed an inconsistency between both Models.

Reportedly, in the renegotiations with Mauritius and the Netherlands, and negotiations with Qatar, Türkiye and the UAE there are efforts to adopt such provisions to align them with Action 7 recommendations.

There is an increased interest from many countries to negotiate tax treaties with Uganda, and the country is pushing to have these anti-abuse provisions as standard policy to preserve its tax base and prevent treaty abuse.

© 2024 IBFD

Therefore, there is a position to incorporate the Action 6 recommendations into existing and future tax treaties.

However, these recommendations have been incorporated in less than 30% of the tax treaties in force:

- Elements (1) and (3): Currently, none of the nine Uganda tax treaties in force has adopted the provisions on commissionaire arrangement and anti-fragmentation of activities between related parties. The treaty with India has partly adopted the provision of article 5(5) on dependent agent (i.e. article 5(4) of the India-Uganda tax treaty). The remaining eight tax treaties in force have adopted specific provisions on dependent agent but not those recommended by Action 7.

- Element (2): Eight out of nine Uganda tax treaties provide for a provision on specific activity exemptions from PE. The Uganda-Zambia tax treaty does not provide for a provision similar to article 5(4) of the OECD and UN Models (therefore all these activities would give rise to a PE if other conditions were met). The Uganda tax treaties with Denmark, Netherlands, Norway, South Africa and the United Kingdom have adopted the provisions of article 5(4) following the 2014 OECD Model Convention i.e. the rule does not provide explicitly that all activities listed are subject to the preparatory or auxiliary character test as recommended by Action 7.

- Element (4): None of the nine Uganda tax treaties in force has currently adopted a specific provision to prevent splitting-up of contracts to avoid construction PE as recommended by Action 7. Only the treaties with Denmark and the Netherlands provide for a form of anti-splitting up of contracts provision i.e. article 22 (hydrocarbon extraction) of the treaty with Denmark and article 23 (offshore activities) of the treaty with the Netherlands contain anti-splitting up of contract, but only applicable for specific sectors.

Nevertheless, Uganda is already aiming to incorporate these rules in two of the existing tax treaties in force i.e. renegotiations with the Netherlands and Mauritius. Uganda is also aiming to adopt these standards in the negotiations with Qatar, Türkiye and the UAE.

Therefore, Uganda has a position to adopt Action 7 recommendations and measures to include them in existing and new tax treaties have been initiated but have been fully adopted in less than 30% of the tax treaties in force.

2.3.2.4. Performance Indicator B.2.4.

Description of Performance Indicator

© 2024 IBFD

Performance Indicator B.2.4. evaluates whether the country has adopted recommendations to align transfer pricing outcomes with value creation as provided by OECD/G20 BEPS Actions 8-10 and further developments. For the recommendations, see the OECD/G20 BEPS Actions 8-10 Final Report[34] and subsequent reports[35] further elaborating these.

The country has adopted the recommendations if the (revised) 2022 OECD Transfer Pricing Guidelines[36] that align transfer pricing outcomes with value creation have been fully adopted by domestic legislation or administrative practice.

Elements to be assessed

For the purpose of this Performance Indicator, the OECD/G20 BEPS Actions 8-10 and subsequent reports recommendations are (see endnote [vi] for a further description of the relevant rules):

(1) application of the arm's length principle, including a framework for delineating the actual transaction (emphasis to be given to consideration of the actual conduct of the parties, allocation of risks based on actual control over them and financial capacity to assume them, and commercial irrationality as a justification to disregard transactions) (Chapter I(D) of the Guidelines);

(2) methodologies for commodity transactions, including use of the comparable uncontrolled price (CUP) method and quoted prices, and use of the shipment date as the pricing date for a commodity transaction (Chapter II of the Guidelines);

(3) specific considerations and guidance for the application of the transactional profit split method (Chapter I(C) and Annex II to Chapter II of the Guidelines);

(4) specific considerations for valuing and pricing intangibles, including hard-to-value intangibles, including entitlement to returns from the exploitation of intangibles based on important value-creating functions related to the development, maintenance, enhancement, protection and exploitation of the intangibles (Chapter VI of the Guidelines and Annex II to Chapter VI);

(5) specific considerations for low-value-added intra-group services, including use of a standard profit mark-up (5%) on costs and a consistent allocation key for all service recipients (Chapter VII of the Guidelines);

(6) specific considerations for cost contribution arrangements (CCAs), including application of the same analytical framework for delineating the actual transaction, allocating risks, and valuing and pricing intangibles (Chapter VIII of the Guidelines). Further, contributions made to a CCA, with a specific focus on intangibles, should not be measured at cost where this is unlikely to provide a reliable basis for determining the value of the relative contributions; and

(7) specific considerations to determine the arm's length conditions for certain financial transactions between associated enterprises (e.g. treasury activities, intra-group loans, cash pooling, etc.) (see Chapter X of the Guidelines).

Each of the above-mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted a recommendation if the relevant element has been fully adopted by the legislation or administrative practice.

Performance Indicator and score

[34] OECD, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241244-en.

[35] OECD (2018), Revised Guidance on the Application of the Transactional Profit Split Method: Inclusive Framework on BEPS: Action 10, OECD/G20 Base Erosion and Profit Shifting Project, OECD Paris, https://www.oecd.org/ctp/transfer-pricing/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.htm; OECD (2018), Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles - BEPS Actions 8-10, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris,https://www.oecd.org/tax/transfer-pricing/guidance-for-tax-administrations-on-the-application-of-the-approach-to-hard-to-value-intangibles-beps-action-8.htm; and OECD (2020), Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS Actions 4, 8-10, OECD, Paris, www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8- 10.htm.

[36] OECD (2022), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, OECD Publishing, Paris, https://doi.org/10.1787/0e655865-en).

© 2024 IBFD

Performance Indicator	Score
Adoption of recommendations to align transfer pricing outcomes with value creation (intangibles; risks and capital; and global value chains and other high-risk transactions) (OECD/G20 BEPS Actions 8-10).	A

Preliminary considerations

The DRMS 20–9/20 - 2023/24 lists, among its policy goals, the prevention base erosion through transfer pricing.

Uganda has adopted domestic legislation on transfer pricing following the OECD Transfer Pricing Guidelines (TPG). The DRSM provides that the government needs to modify transfer pricing provisions to cover all intra-company transactions and limit the ability for domestic businesses to shift profits in order to protect Uganda's tax base against tax avoidance and tax planning[37] (*see also* sections 2.2.1. and 2.2.2.).

The DRMS also states that there is difficulty enforcing transfer pricing legislation in practice as data on independent transactions to form a basis for arm's length pricing is almost impossible to obtain.

Justification for the score given A

The country is given score A, as the Action recommendations have been fully adopted by the legislation or administrative practice.

Uganda has domestic legislation providing for the arm's length principle and, in principle, this legislation covers all elements of the performance indicator. Section 90 of the ITA provides the arm's length principle and gives the Commissioner General the powers to adjust any transaction between related parties which is determined to be not at arm's length. Section 6 of the Income Tax (Transfer Pricing) Regulations 2011 S.I No.30 of 2011 provides that these regulations shall be applied in a manner consistent with the ALP as provided in the 2017 OECD Model Convention (article 9) and the OECD TPG as supplemented and updated from time to time.

Therefore, Uganda has formally adopted the recommendations of Actions 8-10 which are currently part of the OECD TPG. URA, in principle, fully follows such recommendations.

However, during the in-country visit, URA also stated that the main challenge in relation to the arm's length principle is the difficulty in accessing information from foreign sources for comparability purposes, determining the tested party, the most appropriate method, etc. URA would like to obtain this information via EOI with other tax authorities but there is a problem of delay in receiving the information upon request (response times may take from up to 6 months to a year). The Peer Reviews of the Global Forum on Transparency and Exchange of Information have been helpful in expediting the process, but the issue remains challenging.

The Uganda tax authorities also described other notable challenges, as follows:

[37] Domestic Revenue Mobilization Strategy For Uganda 2019/20 – 2023/24 (p. 64-65)

© 2024 IBFD

- issues with commodity pricing (e.g. commodities that are formally traded via Switzerland or Singapore);
- lack of quality of documentation prepared and submitted to URA by the taxpayer in case of an audit which includes benchmarking studies, transfer pricing methods used, and transactions not accurately delineated; and
- lack of penalties in case of transfer pricing adjustments. The domestic legislation provides for penalties in case of failure to provide information but there are no penalties in case of a primary adjustment made by URA.

2.3.2.5. Performance Indicator B.2.5.

Description of Performance Indicator

Performance Indicator B.2.5. evaluates whether the country has adopted the recommendations for measuring and monitoring BEPS provided by OECD/G20 BEPS Action 11. For the recommendations, see the OECD/G20 BEPS Action 11 Final Report.[38] *For a summary of these, see endnote* [vii].

Elements to be assessed

For the purpose of this Performance Indicator, the Action 11 recommendations are:

(1) that a country works together with the OECD for measuring and monitoring BEPS. Accordingly, the country works with the OECD for:
(i) publishing on a regular basis new corporate tax statistics publications relevant to the economic analysis of BEPS; and
(ii) producing periodic reports on the estimated revenue impacts of proposed and enacted BEPS countermeasures;

(2) a country improves:
(i) the public reporting of business tax statistics, particularly for MNEs; and
(ii) the non-tax data relevant to BEPS (e.g. by broadening country coverage and improving data on foreign direct investment associated with resident special purpose entities, trade in services and intangible investments); and

(3) the country encourages more research on MNE activity within tax administrations, tax policy offices, national statistical offices, and by academic researchers, to improve the understanding of BEPS.

Each of the above-mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted a recommendation if it has been fully adopted by its legislation and/or administrative practice.

Performance Indicator and score

Performance Indicator	Score
Adoption of recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	D

Preliminary considerations

[38] OECD, *Measuring and Monitoring BEPS, Action 11 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project pp. 262-265 (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241343-en.

© 2024 IBFD

URA generates statistics that are publicly available on URA's web portal under Publications (specifically under Press Briefs).[39] These statistics are periodically provided to MOFPED.

The statistics generated by URA include the total corporate tax revenue collected by the government; the breakdown of corporate tax by industry/sector; the key income and expense items of the corporate tax base; the identification and quantification of tax credits; the corporate withholding taxes and tax expenditures. For this purpose, URA uses the IT system implemented in 2008 which mostly extracts the information from the tax return forms submitted by taxpayers. At the moment, there are no specific challenges concerning statistics; the information is easily available and collectable as designed by the system. URA has a whole department dealing specifically with statistics (Research and Innovation Unit).

Within MOFPED, the Tax Research Section is in charge of producing tax statistics. This is done based on the information provided mostly by URA, but also with information from other sources, as follows:

- Bank of Uganda;
- Uganda Bureau of Statistics;
- Data within MOFPED (Department of Macroeconomics);
- Uganda National Bureau of Standards; and
- Uganda Registration Service Bureau.

The DRSM 2019/20-2023/24 states the aim of addressing the challenges of the tax administration concerning data analysis, including international tax, and improving the transparency of the tax system, including annual publication of tax expenditures, in line with best international practice. Concerning this, it is also part of the strategy to increase the EOI within other governmental institutions (*see* section 2.2.1.). However, the Uganda tax authorities have not yet started to measure BEPS issues and/or analyzed the revenue impact of anti-BEPS measures adopted in the domestic legislation. From the answers to the B.A.T. Questionnaire and interviews during the in-country visit, it seems that they have not yet fully evaluated the implementation of OECD/G20 BEPS Action 11 recommendations. Currently, URA neither produces statistics on BEPS nor has it instructed the relevant unit(s) to do this task. Nevertheless, Uganda is willing to provide the OECD with the information that it has available at the moment.

MOFPED is keen on obtaining specific statistics on BEPS. However, it is currently not possible for URA to collect information on BEPS based on the information provided by taxpayers under the current tax return forms, which is extracted by the IT system. URA is setting up a BEPS committee and there is goodwill to look further into this area. The tax return forms would need to be changed and the IT system would need to be upgraded in order to capture more information concerning, for example:

- number and/or percentage of small, medium-size and large taxpayers carrying out cross-border activities, and percentage of revenue generated through these types of taxpayers;
- special low tax rates and other tax preferences;
- withholding taxes: countries of destination of outbound payments; and
- the amount of foreign-source income derived by residents and related tax revenue collected.

Also, currently URA cannot collect and provide MOFPED with information regarding MNEs - for example, the number of resident and non-resident MNEs operating in the country, and number of resident MNEs with

[39] See for example URA website, Half-Year Revenue Press Conference For FY 2022/2023 July-December, available at here.

© 2024 IBFD

a total annual turnover of EUR 750 million or more in the country. The information may be available in other government institutions, but it is not shared with URA nor with MOFPED.

Justification for the score given D

The country is given the score *D,* as the OECD/G20 BEPS Action 11 recommendations have not been analyzed by the country (yet).

The Uganda tax authorities are aware of the need to start collecting and analyzing data on BEPS in order to measure and consequently be able to prioritize BEPS issues relevant for the country and evaluate the impact of anti-BEPS measures adopted; however, they have not analyzed Action 11 recommendations yet.

2.3.2.6. Performance Indicator B.2.6.

Description of Performance Indicator

Performance Indicator B.2.6. evaluates whether the country has adopted the recommendations on transfer pricing documentation to enhance transparency for tax administrations as provided by OECD/G20 BEPS Action 13. For the recommendations, see the OECD/G20 BEPS Action 13 Final Report [40] (for compliance with the Minimum Standard on CbC reporting, see Performance Indicator B.1.4.).

Elements to be assessed

For the purpose of this Performance Indicator, the country has adopted the Action 13 recommendations if the (revised) Chapter V of the (revised) 2017 OECD Transfer Pricing Guidelines [41] has been fully adopted by domestic legislation. Such recommendations consist of implementing in a commonly used language:

- *the "Master File", which is filed by a MNE with the tax administration and through which MNEs provide tax administrations with high-level information regarding their global business operations and transfer pricing policies; and*
- *the "Local File", which is specific to each country and filed by a MNE with the tax administration. It requires detailed transactional transfer pricing documentation identifying material related-party transactions, the amounts involved in those transactions and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.*

Each of the above-mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted a recommendation if it has been fully adopted by its legislation.

Performance Indicator and score

Performance Indicator	Score
Adoption of recommendations on transfer pricing documentation (other than CbC reporting) – Master File and Local File (OECD/G20 BEPS Action 13).	**B**

Preliminary considerations

[40] (OECD 2015), *supra* n. 26.
[41] The Guidelines have been subsequently updated in 2022, *see* supra n. 35 and 36.

© 2024 IBFD

See preliminary considerations of section 2.3.2.4. *(*Adoption of recommendations to align transfer pricing outcomes with value creation (OECD/G20 BEPS Actions 8-10)).

Justification for the score given B

The country is given score B, as the measures to adopt OECD/G20 BEPS Action 13 recommendations have been initiated but are not fully implemented in the legislation (yet).

This score is given as Uganda, in principle, has formally adopted the Action 13 recommendations in its domestic legislation. Indeed, Regulation 6 of the Income Tax (Transfer Pricing) Regulations 2011 S.I No.30 of 2011 provides that these regulations shall be applied in a manner consistent with the arm's length principle as provided in the OECD Model Convention (article 9) and the OECD TPG as supplemented and updated from time to time (*see* section 2.3.2.4.).

However, in practice, the Master File and Local File have not been administratively implemented and effectively used by URA. There are no regulations on these, for example, providing whether there is a requirement to file these files or whether this documentation must be available at the time the taxpayer is required to file its tax return (or at another time), or whether taxpayers must keep this documentation in their administration. The ITU stated in the answers to the Questionnaire and interviews that it sometimes receives the Master File from taxpayers when officers request TP documentation. Relating to this issue, it should be noted that a relevant challenge for URA is the lack of quality of documentation prepared and submitted to URA by the taxpayer in case of an audit (*see* section 2.3.2.4.).

2.3.2.7. Performance Indicator B.2.7.

Description of Performance Indicator

Performance Indicator B.2.7. evaluates whether the country has signed and ratified the MLI [42] as a way to swiftly implement (some of) the tax treaty measures recommended by the OECD/G20 BEPS initiative in the country's existing tax treaties. A country is considered to have ratified the MLI when it has deposited the instruments of ratification with the OECD.

Performance Indicator and score

Performance Indicator	Score
Signing the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting (MLI)	D

Preliminary Considerations

Uganda has not signed the MLI. Currently, Uganda has nine tax treaties in force (*see* section 2.3.1.3.). Eight out of the nine Ugandan treaty partners have signed the MLI: Denmark, India, Italy, Mauritius,

[42] Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting, available at https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm

© 2024 IBFD

Netherlands, Norway, South Africa and United Kingdom. These countries, except Norway, have included their tax treaty with Uganda as Covered Tax Agreements. Accordingly, if Uganda were to ratify the MLI and include those treaties under its Covered Tax Agreements, it could simultaneously amend them incorporating the Minimum Standards at least. However, there would be no need to list as Covered Tax Agreements the treaties that are being bilaterally renegotiated (i.e. treaties with Mauritius and the Netherlands).

Justification for score D

The country is given score D as the MLI has been analyzed by the TPD but Uganda still does not have a position to sign (or not sign) the MLI.

The DRMS underlined mainly the need for renegotiation of existing tax treaties to incorporate treaty anti-abuse provisions based on international best practices to address Uganda's international tax concerns on treaty shopping arrangements and other tax avoidance practices (*see* sections 2.2.1., 2.3.1.3., 2.3.2.2. and 2.3.2.3.). However, the DRMS does not state any position on the MLI.

Based on the answers to the Questionnaire and from the meetings held with MOFPED and URA officials during the in-country visit, the Assessment Team concluded that:

- Uganda has a clear position to renegotiate its multilateral tax treaty with the EAC member countries;
- Uganda has initiated bilateral (re)negotiations to adopt the treaty-related OECD/G20 BEPS Action recommendations and it is in talks with other countries about possible negotiations; and
- URA generally considers positively the MLI and the TPD has analyzed it, but there is not yet an official position on signing it or not.

2.3.2.8. Performance Indicator B.2.8.

Description of Performance Indicator

*Performance Indicator B.2.8. evaluates whether the country has adopted the recommendations of the 2015 report to the G-20 Development Working Group (PCT toolkit**:** Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment) to tackle the base erosion and profit shifting impact of tax incentives for investment by amending its legislation and/or administrative practice to make these incentives effective and efficient.* [43]

For this purpose, tax incentives for investment are:

- *any special business income tax provisions granted to qualified investment projects or firms that provides favorable deviation from the general tax code (excluding VAT or tariffs);*
- *introduced at the national level (excluding those implemented at the sub-national level); and*
- *with the aim to stimulate investment and especially, in low income countries, attract foreign direct investment.*

Elements to be assessed

For the purpose of this Performance Indicator, the country has adopted the report recommendations if:

(1) it designs tax incentives considering carefully:

[43] IMF, OECD, UN and World Bank, *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report To The G-20 Development Working Group By The IMF, OECD, UN and World Bank* (World Bank Publishing 2015), available at http://documents.worldbank.org/curated/en/794641468000901692/pdf/100756-Tax-incentives-Main-report-options-PUBLIC.pdf.

© 2024 IBFD

(i) the choice of each tax incentive for investment;
(ii) eligibility criteria to be used in the selection of qualified investments;
(iii) reporting obligations by taxpayers benefiting from tax incentives and ongoing monitoring by tax administration of conditions attached to incentives; and
(iv) making tax incentives temporary rather than permanent;

(2) it exercises good governance of tax incentives:
(i) they are subject to legislative process and consolidated under the tax law;
(ii) their fiscal costs are reviewed annually as part of a tax-expenditure review (the "tax expenditure", i.e. public revenue forgone as a consequence of a tax incentive, is calculated for each tax incentive);
(iii) their approval process is ultimately consolidated under the authority of the Minister of Finance, and to the extent possible, their granting is based on rules rather than discretion; and
(iv) its tax administration implements and monitors such tax incentives;

(3) it evaluates the impact on investment of each tax incentive for investment; and

(4) it participates in international tax coordination initiatives aiming to mitigate international tax competition (e.g. to create a framework for reporting tax incentives and information exchange).

Each of the above-mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted a recommendation if the relevant element has been fully adopted by its legislation and/or administrative practice.

Performance Indicator and score

Performance Indicator	Score
Adoption of the recommendations of the 2015 report to the G-20 Development Working Group to tackle base erosion and profit shifting impact of tax incentives for investment (PCT toolkit: Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment) – Element (1) of the performance indicator – the design of tax incentives	**C,C,C,D**
Adoption of the recommendations of the 2015 report to the G-20 Development Working Group to tackle base erosion and profit shifting impact of tax incentives for investment (PCT toolkit: Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment) regarding – Element (2) of the performance indicator – good governance of tax incentives	**A,C,C,A**
Adoption of the recommendations of the 2015 report to the G-20 Development Working Group to tackle base erosion and profit shifting impact of tax incentives for investment (PCT toolkit: Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment) regarding – Element (3) of the performance indicator – the evaluation of the impact on investment of each tax incentive	**B**
Adoption of the recommendations of the 2015 report to the G-20 Development Working Group to tackle base erosion and profit shifting impact of tax incentives for investment (PCT toolkit: Options for Low	**C**

© 2024 IBFD

Income Countries' Effective and Efficient Use of Tax Incentives for Investment) – Element (4) of the performance indicator – participation in international tax coordination initiatives aiming to mitigate international tax competition	

General considerations

Like many developing and developed countries, Uganda offers tax incentives, which range from tax exemptions for specific organizations/bodies (section 2(b)(b) ITA), tax holidays (section 21(y), (ae), (af)) ITA), and capital and depreciation allowance. (*See* Annex B.7. for a list and description of tax incentives).

The choice, design and legal drafting of tax incentives is the responsibility of the TPD, supported by the Legal Services Board Affairs and other internal divisions such as the Research section. Reportedly, TPD is the only department of the government that may submit tax incentives proposals for parliamentary approval. The administration of tax incentives is the responsibility of URA.

Most tax incentives are granted on a non-discretionary basis and apply automatically if the requirements prescribed by the law are met. In particular, taxpayers who wish to benefit from a tax incentive shall submit a form with evidence to the URA Business Policy Division, which issues a letter of guidance in response. This guidance concerns the requirements and the eligibility criteria, but it does not constitute an official confirmation of the applicability of the incentive scheme to the specific case. The Quality Assurance Unit, which is also part of the Business Policy Division, oversees the monitoring process and carries on field inspections, ensuring that taxpayers comply with the relevant requirements. Tax offices carry on audits selected on the basis of the Compliance Improvement Plan. Finally, the Research and Innovation Unit, under the Information and Technology Division, has started to assess the impact of tax incentives but only from a tax expenditure point of view.

In addition to non-discretionary tax incentives, the Ministry of Finance may commit to pay taxes on behalf of any person under section 40A of the TPC. From the interviews with URA/MOFPED, it emerged that the government tends to write off the tax due, rather than paying the tax. Therefore, the outcome of such commitment is essentially a tax exemption granted on a discretionary basis, as the law does not prescribe any specific time limit, condition or eligibility criteria. The exemption is granted via a Letter of Commitment issued by MOFPED, which informs URA about the commitment.

From the responses to the B.A.T. Questionnaire and the exchange with the authorities during the in-country visit, it appears that both MOFPED and URA have not yet analyzed the PCT toolkit and its recommendations.

However, a number of recommendations from the PCT toolkit “Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment” are apparently already partially implemented by the country. Accordingly, the scores given below reflect the actual implementation by the country by specific (sub)element.

Justification for the scores given

© 2024 IBFD

1. *Design of tax incentives C-C-C-D*

(i) *Choice of each tax incentive for investment: score given C*

The country is given score C, as it follows these recommendations in respect of some tax incentives but not all of them.

According to the interviews with MOFPED, TPD selects the type of incentives to implement based on specific studies aimed at identifying the most effective incentives to fulfil the desired policy objectives. However, the PCT toolkit favours cost-based tax incentives (i.e. incentives that lower the cost of investment such as special tax deductions and credits) over profit-based tax incentives, warning that tax holidays, especially when non-sectorial, often turn out to be ineffective, redundant and tend to attract mobile activities rather than long-term investments. Uganda has various profit-based tax incentives, including tax holidays.

(ii) *Eligibility criteria: score given C*

The country is given score C, as it follows these recommendations in respect of some tax incentives but not all of them. Whilst the granting of incentives under the ITA is in general based on clear eligibility criteria, mostly based on the size of the investment, the law does not attach any criteria to the tax exemptions granted under MOFPED's Letters of Commitment.

(iii) *Reporting obligations by taxpayers and benefiting from tax incentives and ongoing monitoring by tax administration of conditions attached to incentives: score given C*

The country is given score C, as it follows these recommendations in respect of some tax incentives but not all of them. On the one hand, taxpayers benefitting from tax holidays are required to file tax returns, and the Quality Assurance Unit of URA monitors year by year that the taxpayers meet the eligibility criteria. On the other hand, exempt taxpayers under MOFPED's Letters of Commitment are not subject to reporting obligations.

(iv) *Making tax incentives temporary rather than permanent: score given D*

The country is given score D as recommendations have not been analyzed by the country (yet) and the country does not actually follow these recommendations in respect of any tax incentives. Particularly, it should be noted that the provisions of the ITA providing for tax holidays do not contain any time limit as regards the availability of the 10-year holidays.

2. *Good governance of tax incentives A-C-C-A*

(i) *Subjecting tax incentives to legislative process and consolidating them under the tax law: score given A*

The country is given score A, as the recommendations of the PCT toolkit have been fully adopted by the legislation and/or administrative practice.

The introduction of tax incentives in Uganda follows the ordinary legislative procedures. Additionally, all the tax incentives are consolidated under the provisions of the ITA (section 2(bb) for exempt entities; section 21(y), (ae) and (af) for tax holidays). Only the possibility to grant one-off exemptions for special projects funded by grants is codified under the TPC (section 40A).

(ii) *Annual review of the fiscal costs of each incentive*: *score given C*

The country is given score C, as it partially follows these recommendations.

MOFPED prepares a tax expenditure report (publicly available) on the basis of the data provided by URA. The report is also presented by the Cabinet to parliament together with the country's

© 2024 IBFD

budget. However, from the analysis of the country's strategy documents, it appears that the country's tax expenditure framework is not comprehensive, as it "does not capture all revenue that Government has decided not to collect through statutory exemptions and deductions, including the treatment of losses carried forward, nor does it capture the cost of discretionary exemptions" (*see* DRMS, at p. 68).

(iii) *Approval and granting process: score given C*
The country is given score C, as it partially follows these recommendations.
In accordance with the PCT toolkit recommendations, the sole authority to enact tax incentives at the national level is MOFPED. Additionally, the incentives provided by the ITA operate in principle automatically if the eligibility criteria prescribed by the law are met. However, the lack of eligibility criteria or conditions attached to the exemptions granted under MOFPED's Letters of Commitment leaves room to discretion. Finally, it must be highlighted that neither the law nor URA's website specify the procedure to be followed to benefit from the tax holidays provided by the ITA. Also, the country's strategy document explicitly acknowledge that transparency in the approval and granting process should be improved (*see* DMRS, at p. 68).

(iv) *The implementation and monitoring by the tax authorities*: *score given A*
The country is given score A, as the recommendations of the PCT toolkit have been fully adopted by the legislation and/or administrative practice.
The tax authorities receive the requests from taxpayers and issue letters of guidance in response. They also keep record of each taxpayer benefitting from income tax holidays, who are anyway subject to reporting obligations, and are informed by MOFPED about the exemptions granted via Letters of Commitment.

3. Evaluation of the impact on investment of each tax incentive: score given B

The country is given score B as Uganda has taken effective measures to adopt the recommendations, but these recommendations have not yet been fully implemented in the legislation or are not yet fully followed by the tax authorities.

TPD has just started the process of carrying out an assessment of the impact of tax incentives on investment, and it has commissioned a first report to external consultants within the DRM4D project funded by USAID, which reportedly should be submitted by May 2023. A careful evaluation of this report may inform further measures to be taken by TPD to improve the tax incentive framework of the country.

4. Participation in international tax coordination initiatives aiming to mitigate international tax competition: score given C

The country is given score C as Uganda partially follows these recommendations.

TPD participates in the work of the EAC, which focuses on tax policy harmonization within the region. Tax competition is on the EAC's agenda: a study commissioned in 2011 by the EAC resulted in a proposal for a draft Code of Conduct against harmful tax competition. However, after more than 10 years, this proposal has not yet been formally adopted.

However, harmful tax competition is a matter of concern for Uganda. From the interviews during the in-country visit, with both URA and MOFPED, it emerged that regional tax competition seems to be a fact due to financial centres' regimes recently introduced by neighbouring countries (e.g. Kenya and Rwanda) and

© 2024 IBFD

it may force Uganda to consider establishing similar preferential tax regimes to counter this. In this respect, first, discussions with neighbouring countries may be helpful. The EAC seems an ideal forum to hold such discussions with the aim to have a common understanding among member countries about this problem and then ideally a common tax policy.

Tax competition is also a topic discussed at the ATAF meetings, which are attended by TPD. However, URA expresses that the ATAF gathers tax administration officials, who generally do not deal with tax policy, but it has advocated TPD's participation in the ATAF works.

2.3.2.9. Performance Indicator B.2.9.

Description of Performance Indicator

Performance Indicator B.2.9. evaluates whether the country has followed the guidance and/or adopted policy options recommended by the PCT toolkit for addressing difficulties in accessing comparability data for transfer pricing analysis.[44] This toolkit aims to address concerns raised by developing countries regarding the challenges faced in identifying the data needed to carry out a transfer pricing analysis as part of a tax audit.

Elements to be assessed

For the purpose of this Performance Indicator, a country has followed the guidance and/or adopted policy options recommended by the PCT toolkit if it:

(1) follows the guidance of the PCT toolkit to accurately delineate the transaction and then select the most appropriate method, in particular, the comparability analysis process, including:

- *(i) use of quoted prices for commodities: for transactions which comprise the sale of commodities in cases where the Comparable Uncontrolled Price method is appropriate, the arm's length price may be determined by reference to a quoted price (e.g. on a commodities exchange), where available; and*
- *(ii) use of any available comparable data in case of one-sided methods: for transactions in which the analysis concludes that a one-sided method is most appropriate, the evaluation of the economically relevant characteristics of the transaction will help to make the best use of any available comparable data (which may include information on imperfect comparables such as those from foreign markets) to determine appropriate arm's length outcomes; and*
- *(iii) use of internal data for the profit split method: for transactions in which the analysis concludes that a profit split approach is most appropriate to the tested transaction, direct benchmarking data (data on comparable transactions) may not be required and instead internal data can be used; and or*

(2) adopts some of the suggested policy options in case of lack of publicly available comparable data, in particular:

- *(i) safe harbours: use of carefully constructed safe harbors aligned with the arm's length principle;*
- *(ii) prescriptive rules: use fixed margins or determine the way in which a price is to be calculated for all transactions of a particular type; and*
- *(iii) anti-avoidance measures: where there is a significant and systemic risk of base erosion or profit shifting, adopt anti-avoidance or protective measures (e.g. limitation on deductibility of payments, such as, royalties, interest and fees).*

Each of the above-mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted the recommendations if the relevant element has been fully adopted by its legislation and/or administrative practice.

Performance Indicator and score

[44] IMF, OECD, UN and World Bank, A Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses Including a supplementary report on Addressing the Information Gaps on Prices of Minerals Sold in an Intermediate Form (World Bank Publishing 2017), available at http://documents.worldbank.org/curated/en/447901498066167863/pdf/116573-REVISED-PUBLIC-toolkit-on-comparability-and-mineral-pricing.pdf

© 2024 IBFD

Performance Indicator	Score
Adoption of the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses.	Other

Preliminary considerations

See preliminary considerations of section 2.3.2.4. *(*Adoption of recommendations to align transfer pricing outcomes with value creation (OECD/G20 BEPS Actions 8-10)).

The DRMS 20–9/20 - 2023/24 also establishes that even with the presence of legislation on the arm's length principle in place, there is difficulty enforcing it in practice as data on independent transactions to form a basis for such arm's length pricing is almost impossible to obtain.

During the in-country visit, URA also stated that the main challenge in relation to the arm's length principle is the difficulty in accessing information from foreign sources for comparability purposes. URA has access to the Bureau van Dijk (BVD) database since 2022 and it has used it for benchmarking studies. They indirectly use imperfect data because the benchmarks from the BVD are usually foreign. URA states that it intends to use the ATAF database when it becomes available, which may provide more relevant comparables (regional or even domestic comparables). For tax audits, URA uses information provided by taxpayers, information publicly available (e.g. MNE group website) and the BVD database. Most information is only collected from taxpayers via tax returns.

For URA, the biggest challenge is currently the pricing of coffee. URA does not have access to third-party agreements relating to the arm's length principle in order to determine whether the functional analysis aligns with value creation. The commodity indices for coffee (e.g. arabica and robusta) are available for use as a reference but these are standard prices. A premium should be included to account for differences in the coffee (i.e. quality in relation to country-specific coffee). The market rates for the premiums are not transparent and this affects the results. Upon determination of the premium and transfer price, URA usually chooses the resale minus method as opposed to the CUP (with commodity indices as a comparable). TNMM is not usually an appropriate method due to the lack of information on the trading company.

URA does not receive information from the Central Bank and, in general, from the financial sector at large because they are bound by bank secrecy. The requirement for obtaining this information from the financial institutions for determining the tax liability of a taxpayer is not very clear within this sector. The government needs to harmonize this obligation so that URA can receive this information from the financial sector. Reportedly, there was a recent ruling by court where URA was denied access to bank account information from taxpayers due to the confidentiality of client information.

For audits, URA requests the TP documentation prepared by the taxpayer. This is followed by a fact-finding interview. Thereafter it carries out a benchmarking study. TP documentation should be in place at the time of submitting the tax return, but it is submitted only upon request.

© 2024 IBFD

Justification for the score given Other

The country is given score "Other", as there is a country position not to adopt the PCT toolkit recommendations.

URA's ITU has stated that it has studied the PCT toolkit, but they have not used its recommendations as they are not pertinent to the Uganda reality e.g. it relates to sectors that are not relevant. Nevertheless, it seems to the Assessment Team that the ITU has not fully reviewed and evaluated all the PCT recommendations e.g. the use of safe harbours and the use of fixed margins.

2.3.2.10. Performance Indicator B.2.10.

Description of Performance Indicator

Performance Indicator B.2.10. evaluates whether the country that has a position to tax indirect transfer of assets has followed the PCT toolkit: Taxation of Offshore Indirect Transfers.[45] This toolkit provides practicable guidance to countries on policy options to address that issue, should they choose to do so.

The issue of offshore indirect transfer of assets arises e.g. when a foreign investor, instead of selling the underlying assets directly, sells the shares of the domestic subsidiary or the shares of the foreign subsidiary with a branch operation in the country, so as to avoid taxation in the country of source. A similar result would be achieved if the shares of the domestic corporation were held by a holding company and the shares of the holding company were sold. If the shares are sold, the gains on the asset will escape taxation by the source country unless the domestic law of the source country has a special provision to tax such gains. Even if the domestic law has the appropriate provisions, tax treaty provisions may in some circumstances prevent taxation of the gain in the source country.

Elements to be assessed

For the purpose of the Performance Indicator, a country has followed the practical guidance of the PCT toolkit: Taxation of Offshore Indirect Transfers recommendations if it:
(1) implements domestic measures to tax capital gains derived by non-residents due to the indirect transfer of assets located in the country, i.e. tax the sale of shares or participating interest of a non-resident (e.g. a foreign corporation) that has a PE in the country or that owns the shares or participating interest of a resident person (e.g. a domestic corporation) or that indirectly owns assets located in the country; and
(2) adopts specific anti-avoidance rules in tax treaties to tax capital gains from the alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the alienation of shares of a domestic company (see article 13(4) of the (2017) OECD Model and article 13(4) and (7) the (2021) UN Model).
The above-mentioned items are the elements of the Performance Indicator that will each be assessed.

The country has fully adopted a recommendation if it has been fully adopted by its legislation and/or tax treaties.

Performance Indicator and score

Performance Indicator	Score
Adoption of the practical guidance of the PCT toolkit: Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country –	A,D

[45] IMF, OECD UN and World Bank, The Taxation of Offshore Indirect Transfers – A Toolkit (2020), available at: https://www.oecd.org/tax/taxation-of-offshore-indirect-transfers.htm.

© 2024 IBFD

element (1) of the performance indicator (implementation of domestic measures)	
Adoption of the practical guidance of the PCT toolkit: Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country (as also elaborated in article 13 of the 2021 UN Model Convention) – element (2) of the performance indicator (adoption of specific anti-avoidance rules in tax treaties)	C

Preliminary considerations

The DRMS 20–9/20 - 2023/24 and other strategy documents do not refer to the BEPS issue of offshore indirect transfer of assets located in the country (*see* sections 2.2.1. and 2.2.4.). However, Uganda taxes capital gains including those derived from indirect transfer of assets as further described below, and it has a position to adopt relevant tax treaty provisions to secure its taxation rights.

Uganda does not tax capital gains under a separate regime, but as part of business income (section 18(1)(a) of the ITA), which is part of gross income (section 17(1)(a) of the ITA). Section 15 of the ITA determines that the chargeable income of a person is the gross income, less total deductions allowed under the legislation, while section 17 of the ITA indicates that the gross income of a non-resident person includes only income derived from sources in Uganda. This means that Uganda may tax income (which includes capital gains) from Ugandan sources derived by non-resident persons.

Justification for score A given

The country is given score A, as recommendations in the PCT toolkit to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country in respect of the sale of shares or participating interest of a non-resident that owns the shares or participating interest of a resident person or that indirectly owns assets located in the country have been fully adopted by domestic legislation.

As indicated in the preliminary considerations, Uganda may tax income (including capital gains) from Ugandan sources derived by non-resident persons.

In this sense, section 79 (ga) determines that income is derived from sources in Uganda to the extent to which it is derived from the direct or indirect change of ownership by 50% or more of a person other than an individual, a government, a political subdivision of a government and a listed institution located in Uganda. This means that income from the indirect transfer of shares (by 50% or more) in a company located in Uganda is taxable in Uganda. For this purpose, section 75(2) determines that if that person (other than an individual, a government, a political subdivision of a government and a listed institution) changes its ownership by 50% or more within a period of three years, it shall be treated as: (a) realizing all its assets and liabilities immediately before the change; (b) having parted with ownership of each asset and deriving an amount in respect of the realization equal to the market value of the asset at the time of the realization; (c) re-acquiring the asset and incurring expenditure of the amount referred to in paragraph (b) for the acquisition; (d) realizing each liability; and is deemed to have spent the amount equal to the market value of that liability at the time of the realization; and (e) restating the liability for the amount referred to in paragraph (d).

© 2024 IBFD

In addition, section 79 (g) of the ITA indicates that income is considered derived from sources in Uganda to the extent to which it is derived from the disposal of an interest in immovable property located in Uganda or from the disposal of a share in a company the property of which consists directly or indirectly principally of an interest or interests in such immovable property, where the interest or share is a business asset.

Therefore, Uganda has fully adopted the recommendations of the PCT toolkit in its domestic legislation. However, URA indicated in the answers to the questionnaire and also during the in-country visit interviews that they face challenges in respect of effective application of this legislation:

- obtaining information about offshore transfers resulting in an indirect change of ownership of a resident person;
- computing the tax according to its legislation, particularly, determining the realization and acquisition of all assets and liabilities at market value;
- tax collection: for regulated sectors such as the telecom sector, URA usually has an upper hand because the regulators require the taxpayer to obtain clearance from URA before conclusion of the transaction. For non-regulated taxpayers, URA must collect from the resident entity through the deemed disposal provision, which is usually a challenge.

The TPD expressed during the in-country visit interviews that they would like to further research on how to properly deal with these issues.

Justification for score D given

The country is given score D, as recommendations in the PCT toolkit to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country in respect of sale of shares or participating interest of a non-resident that has a PE in the country have not been analyzed by the country (yet).

Justification for score C given

The country is given score C, as treaty-related measures to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country have been initiated but fully adopted in less than 30% of tax treaties in force, i.e. only (and partially) in the treaty with India.

Uganda may consider that its domestic legislation is not limited by tax treaties as the country taxes its own residents on a deemed disposal provision, nevertheless treaty partners and/or taxpayers may disagree on such interpretation, which may give rise to disputes. This issue has been addressed by the PCT toolkit, which refers to the general principle that tax treaties do not restrict a country's right to tax its own residents. The toolkit states that this principle is also confirmed by the recent changes to the OECD and UN Model Conventions, namely the introduction of paragraph 3 to article 1. This paragraph confirms that principle except where this is intended not to apply and lists the provisions with respect to which that principle is not applicable. So, it seems important for Uganda to include such article 3 paragraph 1.

It is useful to bear in mind that the PCT toolkit also has another approach by which capital gains made in the context of the indirect transfer of assets are taxed and such taxing rights are secured by including article 13(4) of the 2017 OECD Model and article 13 paragraphs (4), (6) and (7) of the 2021 UN Model.

© 2024 IBFD

Regarding the adoption of specific anti-avoidance rules in tax treaties, none of the Uganda tax treaties in force has a provision that follows article 1(3) of the 2017 OECD Model Convention and 2021 UN Model Convention.

Among the tax treaties signed by Uganda that are currently in force (*see* section 2.3.1.3., Preliminary considerations), only the treaty with India has a provision (article 13(4)), which is generally similar, but with relevant deviations, to article 13(4) of the 2017 OECD Model Convention and the 2021 UN Model Convention (i.e. direct and indirect transfer of shares or comparable interests on immovable property situated in the country). The main deviations from the relevant provisions of the OECD and UN Model Conventions are that (i) the treaty provision does not have the 365-day rule; and (ii) the treaty provision does not refer to the share or comparable interest deriving more than 50% of their value directly or indirectly from immovable property, but, instead, to the property consisting directly or indirectly *principally* of immovable property situated in the country (following thus the wording of Ugandan domestic law). Note that this treaty does not have a provision allocating taxing rights to the source state in case of offshore indirect transfers of entities other than entities deriving their value from immovable property (i.e. a provision similar to article 13(7) of the 2021 UN Model Convention).

It should be noted that the treaty with Norway has one clause (article 14(4))[46] where an indirect gain is targeted, but it applies only in respect of individual shareholders.

Nevertheless, the country has a position to adopt the relevant tax treaty measures. The proposed DRM4D (amended) Uganda Model Convention, contains a provision (article 13(4)) identical to article 13(4) of the 2017 OECD and the 2021 UN Model Convention, but not provision corresponding to article 13(7) of the 2021 UN Model Convention. However, the EAC Model for negotiations between EAC member countries and non-EAC member countries contains a provision (article 13(4)) similar to article 13(4) of the 2017 OECD Model Convention and the 2021 UN Model Convention (with the difference that the percentage of the value derived directly or indirectly from immovable property is left open for states to decide) and a provision (article 13(7)) identical to article 13(7) of the 2021 UN Model Convention.

Among the treaties signed but not yet in force that are available to the Assessment Team, the treaty with China has a similar provision (article 13(4)) to article 13(4) of the 2017 OECD Model Convention and the 2021 UN Model Convention, with the main difference that such provision in the treaty does not include the 365-day rule.

The Uganda tax authorities have not further evaluated the relevance of either existing tax treaty provisions or those included in the country model, particularly, their interaction with the existing domestic law. If necessary, the Uganda Model Convention should be reviewed including treaty-related measures to further secure domestic taxing rights. URA informed that indeed indirect transfer of assets is a major issue for Uganda, and it is relevant to incorporate treaty rules in existing tax treaties to protect the country's taxation rights, if necessary.

[46] Norway-Uganda tax treaty, article 14(4) provides "*Gains derived by an individual who is a resident of a Contracting State from the alienation of shares or other rights in a company which is a resident of the other Contracting State, as well as gains from the alienation of options or other financial instruments related to such shares or rights, may be taxed in that other State, but only if the alienator has been a resident of that other State at any time during the five years immediately preceding the alienation of the shares, rights, options or financial instruments*"

© 2024 IBFD

2.3.2.11. Performance Indicator B.2.11.

Description of Performance Indicator

Performance Indicator B.2.11. evaluates whether the country has adopted the 2017 UN Tax Handbook recommendations on tackling base erosion and profit shifting due to outbound payments in general and, specifically, service charges and management and technical fees (the deductibility of outbound interest payments is considered specifically in Performance Indicator B.2.1.).[47]

Elements to be assessed

For the purpose of this Performance Indicator, a country has adopted the UN Tax Handbook recommendations if it:

(1) implements domestic measures to tax outbound payments of rents, royalties and service fees payments (e.g. management, consulting and technical service fees) derived by non-residents when such payments are deductible in the country; and

(2) adopts tax treaty clauses, other than the business profits or income from independent personal services clauses, that allow source country taxation of service fee payments, such as management, consulting or technical service fee payments made to non-resident enterprises (e.g. clauses following article 12A of the 2021 UN Model on the taxation of fees for technical services, or inclusion of service fees in the scope of clauses following article 12 of the 2021 UN Model on taxation of royalties), as well as of payments of rents and royalties (e.g. by clauses following articles 6 of the 2021 UN Model or 2017 OECD Model, and article 12 of the 2021 UN Model).

Each of the above mentioned elements of the Performance Indicator will be assessed.

The country has fully adopted a recommendation if it has been fully adopted by its legislation and/or tax treaties.

Performance Indicator and score

Performance Indicator	Score
Adoption of 2017 UN Tax Handbook on Protecting the Tax Base recommendations to tackle base erosion and profit shifting regarding outbound payments in general and, specifically, service charges, management and technical fees – Domestic legislation recommendations – Element (1) of the performance indicator	**A**
Adoption of 2017 UN Tax Handbook on Protecting the Tax Base recommendations to tackle base erosion and profit shifting regarding outbound payments in general and, specifically, service charges, management and technical fees – Tax treaties recommendations – Element (2) of the performance indicator	**B**

Preliminary considerations

The DRSM–2019/20 - 2023/24 prioritize, among other challenges, the need to review and strengthen the source rules and the withholding tax on technical fees paid to non-residents to preserve source taxing rights

[47] UN, Tax Handbook on Protecting the Tax Base of Developing Countries, Protecting the tax base: an overview (UN Publishing 2017), Chapter II and IX, available at: https://www.un.org/esa/ffd/wp-content/uploads/2015/07/handbook-tb.pdf

© 2024 IBFD

(*see* sections 2.2.1. and 2.2.4. concerning the Uganda strategy regarding BEPS issues, other than OECD/G20 BEPS initiative).

For a brief description of the Uganda strategy concerning tax treaties as depicted in the DRMS, tax treaty policy, country treaty model(s) and treaties in force, signed, and under (re)negotiations, *see* preliminary considerations in section 2.3.1.3. *(*Compliance with the BEPS Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6)).

Justification for the score given A – Domestic legislation – Element (1) of the performance indicator

The country is given score A, as the 2017 UN Tax Handbook recommendations, relating to domestic legislation on tackling base erosion and profit shifting due to outbound payments in general and, specifically, service charges and management and technical fees, have been fully adopted.

According to the general domestic principles regarding the deductibility of costs provided by sections 22-38 of the ITA, payments of service fees, including management fees, rents and royalties to non-resident are tax deductible. However, Uganda imposes a final withholding tax on the gross amount on all these payments, usually at the rate of 15%, as provided by section 83 of the ITA for management charges, rents and royalties, and section 84 of the ITA for service fees.

Justification for the score given B – Tax treaty provisions – Element (2) of the performance indicator

The country is given score B, as treaty-related measures recommended by the 2017 UN Tax Handbook for tackling base erosion and profit shifting due to outbound payments in general and, specifically, service charges and management and technical fees, have been initiated and fully adopted in 30% or more of the tax treaties in force, but not fully adopted in all tax treaties in force (yet).

In particular, the score given is supported by the following considerations:

- as regards rent payments, almost all the tax treaties currently in force (*see* section 2.3.1.3.) contain a provision assigning primary taxing right to the state where the immovable property is located, similar to article 6 of both the 2021 UN Model Convention and the 2017 OECD Model Convention. The only exception seems to be the tax treaty with Zambia, which provides for a sourcing rule but no allocation of taxing rights;
- as regards royalties, all the tax treaties currently in force contain a provision allowing source taxation following article 12 of the 2021 UN Model Convention (the recommendations have been fully adopted in 100% of the tax treaties currently in force);
- as regards service charges and management and technical fees, four out of nine tax treaties currently in force provides for taxation at source without any time threshold or physical presence requirement, i.e. the recommendations have been fully adopted in 44% of the tax treaties currently in force. In particular, the following treaties allow source taxation in respect of such payments:
    - treaty with India (article 12 “Royalties and fees for technical services”);
    - treaty with Italy (article 13 “Technical fees”);
    - treaty with South Africa (article 13 “Technical fees”); and
    - treaty with the United Kingdom (article 13 “Technical fees”).

It should also be mentioned that the EAC Model Convention provides for the taxation at source of rents, interest, royalties and technical service charges.

© 2024 IBFD

For more details, *see* the table of tax treaties in Annex B.3.

2.3.2.12. Performance Indicator B.2.12.

Description of Performance Indicator

Performance Indicator B.2.12. evaluates whether the country has adopted the recommendations in the field of VAT of the OECD/G20 BEPS Action 1 (digital economy) Final Report [48], as subsequently incorporated in the OECD International VAT/GST Guidelines [49] and complemented by subsequent reports.[50]

Elements to be assessed

For the purpose of this Performance Indicator, a country has adopted these recommendations if:

(1) it is able to collect VAT (or a similar tax) as the "destination country" (i.e. the country in which the consumer of the digital or non-digital goods or services is habitually resident) where goods or services are acquired by private consumers from non-resident suppliers without a physical presence in the country following the registration mechanism, eventually using simplification measures, including the use of digital platform to collect VAT/GST on online sales (B2C transactions);
(2) it is able to collect VAT (or a similar tax) as the "destination country" (i.e. the country in which the consumer of the digital or non-digital goods or services is habitually resident) where goods or services are acquired by businesses from non-resident suppliers without a physical presence in the country following the reverse charge mechanism (B2B transactions); and
(3) it does not provide an exemption from VAT for imports of low-value goods.

The above-mentioned items are the elements of the Performance Indicator that will each be assessed.

The country has fully adopted a recommendation if it has been fully adopted by its legislation.

Performance Indicator and score

Performance Indicator	Score
Adoption of recommendations of the OECD/G20 BEPS Action 1 Final Report relating to VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy – *B2C transactions* – Element (1) of the performance indicator	B
Adoption of recommendations of the OECD/G20 BEPS Action 1 Final Report relating to VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy – *B2B transactions* – Element (2) of the performance indicator	A

[48] OECD*, Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project (*OECD Publishing 2015), available at: http://dx.doi.org/10.1787/9789264241046-en
[49] OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264271401-en.
[50] OECD (2017), *Design and operation of mechanisms for the effective collection of VAT/GST in cases where the supplier is not located in the jurisdiction of taxation*, OECD Publishing, Paris, available at https://www.oecd.org/tax/consumption/mechanisms-for-the-effective-collection-of-vat-gst.htm; OECD (2019), The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf.

© 2024 IBFD

Adoption of recommendations of the OECD/G20 BEPS Action 1 Final Report relating to VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy – *VAT on imports of low-value goods* – Element (3) of the performance indicator	D

Preliminary considerations

Under the DRMS 2019/20-2023/24 addressing the challenges of the digitalized economy is a priority for Uganda and part of its strategy. For details, *see* sections 2.2.1. and 2.2.5.

Justification for score B given – B2C transactions – Element (1) of the performance indicator

The country is given score B since domestic measures to adopt recommendations for the collection of VAT as the “destination country” in the relevant B2C transactions (i.e. online sale of goods and provision of digital services to consumers in Uganda) have been initiated but are not fully implemented (yet). More specifically, the country is generally able to collect VAT in the provision of digital services to customers in Uganda, but the collection method for the online sale of goods to customers in Uganda is not yet effective, as described below.

B2C transactions – provision of digital services

Uganda is entitled to collect VAT on digital services as the destination country in B2C transactions, since non-resident persons without a taxable physical presence in Uganda who supply electronic services to consumers (non-taxable persons) in Uganda are subject to VAT at the standard rate of 18%. According to section 16(2)(d) of the VAT Act, a supply of services is considered to take place in Uganda if the recipient of the supply is not a taxable person and the services are electronic services delivered to a person in Uganda at the time of supply. Section 16(5)(a) also indicates that “electronic services” includes the following, when provided or delivered remotely: (i) websites, web-hosting or remote maintenance of programs and equipment; (ii) software and the updating of software; (iii) images, text and information; (iv) access to databases; (v) self-education packages; (vi) music, films and games including games of chance; or (vii) political, cultural, artistic, sporting, scientific and other broadcasts and events including television.

According to section 31a(1a), non-resident persons providing electronic services to a non-taxable person in Uganda (B2C transaction) must file a tax return with the Commissioner General within 15 days after the end of three consecutive calendar months and pay the VAT due. They are required to register for VAT through a simplified mechanism if the value of the supplies exceeds UGX 37.5 million in any 3-month period and UGX 150 million in a 12-month period. The system for registration, online filing of VAT returns and payment of VAT is accessible through the e-Services provided on URA’s website. As an alternative, non-resident persons may appoint a tax agent or a tax representative for purposes of fulfilling their tax obligations. The Commissioner General of URA may also, at the cost of a non-resident person, appoint another person to prepare and furnish the return on behalf of the non-resident person. URA also issued a public notice on 27 January 2022 notifying all non-resident suppliers of electronic services to collect, file and pay VAT.

URA informed during the interviews that the registration system has been in place since 2021, but since not so many taxpayers were registering and filing returns, URA decided to actively engage with them,

© 2024 IBFD

resulting in many returns being filed in January 2023 (related to transactions of the last quarter of 2022). They also indicated that the main problem faced so far is finding a way to enforce this collection method (i.e. registration) on smaller enterprises (when they exceed the registration threshold), as URA is not able to know they are providing such services and receiving payments. Compliance actions are currently being discussed, such as obtaining information from the Bank of Uganda (central bank); URA also expressed interest in learning other forms of collection used by other countries for further discussion and consideration among the tax authorities.

Indeed, the country seems to be constantly discussing and trying to improve its legislation on the topic, as not only the simplified registration mechanism for B2C provision of digital services was implemented in the past couple of years, but also the review of tax laws to better address the challenges of the digitalized economy is stated as a priority for Uganda and became part of its strategy, as indicated in the country's strategy documents (*see* section 2.2.5.).

B2C transactions – online sale of goods (e-commerce)

However, Uganda does not yet effectively collect VAT on the online sale of goods (e-commerce) in B2C transactions. URA informed during the in-country visit interviews that, in principle, Customs should be able to collect VAT on these goods but in practice this is not effective. They indicated that, once the online services regime is stabilized, URA will tackle the online sale of goods.

Justification for score A given – B2B transactions – Element (2) of the performance indicator

The country is given score A since recommendations for the collection of VAT as the "destination country" in the relevant B2B transactions (i.e. online sale of goods and provision of digital services to businesses in Uganda) have been fully adopted by the legislation.

Uganda is also able to collect VAT as the destination country in B2B transactions since an effective reverse charge mechanism currently applies. Section 4(b) and (c) of the VAT Act determine that VAT shall be charged in Uganda on the import of goods and services. Further, section 5(1)(b) and (c) states that in case of import of goods, the VAT due must be paid by the importer while the VAT due on the import of services is due by the person receiving the supply (i.e. reverse charge mechanism).

Justification for score D given – VAT on imports of low-value goods – Element (3) of the performance indicator

The country is given score D since recommendations concerning VAT on the import of low-value goods have not been analyzed by the country (yet).

Section 20 of the VAT Act states that an import of goods is exempted if the goods: (a) are exempt from customs duty under the Fifth Schedule of the East African Community Customs Management Act 2004 except compact fluorescent bulbs with a "power connecting Cap." at the end, and lamps and bulbs made from Light Emitting Diodes (LED) technology for domestic and industrial use; or (b) would be exempt had they been supplied in Uganda. In respect of section 20(b), exempt domestic supplies are listed in the second schedule of the VAT Act.

Regarding section 20(a) of the VAT Act, section 5(9) of the Fifth Schedule of the East African Community Customs Management Act 2004 states that goods up to the value of USD 300 for each traveler in respect

© 2024 IBFD

of goods other than goods referred to in paragraph 8 of this item shall be exempted when imported by the traveler in their accompanied baggage or upon their person and declared by them to an officer, provided that the person has been outside the Partner State for a period in excess of 24 hours. However, in principle, this type of exemption, normally granted to travelers, would be out of the scope of OECD/G20 BEPS Action recommendations. However, during the in-country visit interviews, the tax authorities did not *see*m to be aware of the recommendations in respect of VAT on imports of low-value goods.

2.3.2.13. Performance Indicator B.2.13.

Description of Performance Indicator

Performance Indicator B.2.13. evaluates whether the country has adopted any of the options dealt with by the 2017 UN Tax Handbook on Protecting the Tax Base relating to unilateral tax measures to tackle base erosion and profit shifting due to the digitalization of the economy. The Handbook states: "Developing countries are thus advised to go beyond BEPS and to take advantage of the historic opportunity of a burgeoning multilateral process and address the fundamental base definition and tax enforcement issues that arise in a digital economy. Specifically, the focus should be on how to change the tax rules that govern the digital economy, rather than on attempting to fit the digital economy into traditional tax rules." [51]

Besides the options mentioned in the UN Handbook, other organizations have recommended approaches to design other unilateral measures such as digital services taxes (e.g. ATAF) [52]*, or considered to adopt them (e.g. EU draft directive).*[53] *Performance Indicator B.2.13., acknowledging that several countries implemented such measures as described by 2018 OECD interim report* [54]*, gives score Other in case a country has adopted such other unilateral measures.*

Elements to be assessed

For the purpose of this Performance Indicator, a country has adopted these recommendations if it has implemented one of the following policy options dealt with by the 2017 UN Tax Handbook on Protecting the Tax Base:
(1) Amendments to the PE test (e.g. virtual PE based on significant economic presence or general revenue-based PE) and to the rules attributing profits to a PE; or
(2) Imposing withholding taxes on online services (e.g. deeming online services as technical services); or
(3) Implementing domestic anti-avoidance measures, such as Diverted Profit Taxes or denial of deductions for payments exempt from withholding taxes.[55]

Performance Indicator and score

---

[51] UN (2017), *supra* n. 47, Chapter VIII, page 512.
[52] ATAF (2020), *Suggested Approach to Drafting Digital Services Taxes Legislation,* ATAF Publication, https://events.ataftax.org/index.php?page=documents&func=view&document_id=79.
[53] *See* for example the EU Commission Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (COM(2018) 128 final), available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2018:148:FIN. However, this proposal has currently been dismissed.
[54] For an overview of these measures, *see* OECD(2018), *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris*, https://doi.org/10.1787/9789264293083-en.
[55] UN (2017), *supra* n. 47, Chapter VIII, page 513-521.

© 2024 IBFD

Performance Indicator	Score
Adoption of the recommended options included in the 2017 UN Tax Handbook on Protecting the Tax Base relating to unilateral tax measures to tackle base erosion and profit shifting due to the digitalization of the economy.	A

Preliminary considerations

Under the DRMS 2019/20-2023/24, addressing the challenges of the digitalized economy is a priority for Uganda and part of its strategy. For details, *see* sections 2.2.1., 2.2.5 and 2.2.6.

Justification for score A given

The country is given score *A,* as one recommended option has been fully adopted by the legislation, that is, the adoption of a tax on non-residents providing digital services.

The country is indeed aware of the problems arising from the digitalization of the economy and is considering alternative measures to tackle such issues.

In this context, on 30 March 2023, the government presented to the parliament the Income Tax Amendment Bill 2023, which proposed several changes, including the introduction of a tax on non-residents providing digital services to customers in Uganda. Accordingly, a new article 86A on taxation of non-residents providing digital services would be included under Part IX – International Taxation of the ITA (referred to as Principal Act in the Income Tax Amendment Bill 2023, as per section 2 of the bill).

According to article 86A, a tax is imposed on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at a final rate of 5% levied on gross income. Income is derived from providing digital services in Uganda to a customer in Uganda if the digital service is delivered over the Internet, electronic network or an online platform. Digital services that would be subject to tax would include online advertising services; data services; services delivered through an online marketplace or intermediation platform; digital content services, including accessing and downloading of digital content; online gaming services; cloud computing services; data warehousing; other services delivered through a social media platform or an Internet search engine; and any other digital services as the Minister may prescribe. This proposal was passed by the parliament in July 2023. The final approved text also indicates that “a non-resident person under this section shall lodge a tax return with the Commissioner General within fifteen days after the end of the tax period."

Although the tax has features of a digital service tax (e.g. it is levied on gross income and through self-assessment), Uganda should be aware that treaty partners may argue that this tax has the nature of a tax on income falling into the scope of article 2 of tax treaties (and therefore limited by them, depending on the allocation of taxing rights for service/digital service fees). This is due to the fact that such tax was implemented through the insertion of an article (86A) in the ITA (under Part IX – International Taxation), that is, an addition to the *income tax* act. Arguments may be raised by Uganda in the sense that, from a material/content perspective, the tax is a digital service tax and falls outside the scope of tax treaties.

© 2024 IBFD

Alternatively, Uganda may also adjust its treaties to allow the levy in Uganda (taxation at source) of income tax on service/digital service fees (also covering the new self-assessed tax).

Nevertheless, the above measure-shows that indeed Uganda is addressing the challenges of the digitalized economy. MOFPED has also expressed that it is still considering alternative ways to better address this problem. For example, the TPD is analyzing the possibility of following the same collection method implemented for VAT on B2C transactions, i.e. simplified registration (*see* section 2.3.2.12), and how to overcome the downsides of such approach (lack of ways to enforce registration by non-resident persons). TPD is interested in learning how other countries have been solving this problem.

It should be noted that under section 85 of the ITA, Uganda also levies a final withholding tax at the rate of 15% on the gross amount derived by non-resident persons in case there is a “Ugandan-source services contract”. Section 85(4) of the ITA determines that “Ugandan-source services contract” means a contract, other than an employment contract, under which: (a) the principal purpose of the contract is the performance of services which gives rise to income sourced in Uganda; and (b) any goods supplied are only incidental to that purpose. Although this does not seem to target digital services, the broad scope of the definition of services covered by such rule could in theory allow the taxation of outbound payments for certain digital services. However, URA confirmed during the in-country visit interviews that despite the broad scope of the rule, it does not apply to digital services. It should be noted that even if the broad scope of section 85 of the ITA would allow the taxation of digital services provided by non-resident persons, such a rule would still face some limitations, as the application of withholding taxes by individual consumers is still a challenging method of collection. In addition, Uganda may be prevented to levy such tax by some of its tax treaties in force (*see* section 2.3.2.11.).

2.3.2.14. Performance Indicator B.2.14.

Description of Performance Indicator

Performance Indicator B.2.13. evaluates whether a country has adopted any tax treaty measure allowing source taxation of non-resident digital services despite the absence of PE or fixed base, including article 12B of the 2021 UN Model Convention. Article 12B deals with income from automated digital services, as defined in the article, allocating shared taxing rights between the source and the residence state. Under this provision, the source state may tax such income by means of a (reduced) treaty rate on the gross amount or the domestic rate on a deemed net basis.

Elements to be assessed

For the purpose of this Performance Indicator a country has adopted any tax treaty provisions allowing source taxation of non-resident digital businesses despite the absence of PE or fixed base if it:

(1) adopts article 12B of the 2021 UN Model on Income from Automated Digital Services;
(2) amends the technical services definition in Article 12A of the 2021 UN Model including digital services [56]; and/or
(3) amends the royalties definition in Article 12 of the 2021 UN Model including digital services fees.[57]

The country has fully adopted the recommendations if the relevant provision has been fully adopted in its tax treaties.

Performance Indicator and score

[56] UN (2017), *supra* n. 47, Chapter VIII, page 518.
[57] UN Model (2021), Commentary on Article 12A, paragraph 24, page 397.

© 2024 IBFD

Performance Indicator	Score
Adoption of any tax treaty measure allowing source taxation of non-resident digital services despite the absence of PE or fixed base	C

Preliminary considerations

Under the DRMS 2019/20-2023/24, addressing the challenges of the digitalized economy is a priority for Uganda and part of its strategy. For details, *see* sections 2.2.1., 2.2.5 and 2.2.6.

For a brief description of the Uganda strategy concerning tax treaties as depicted in the DRMS, tax treaty policy, country treaty model(s) and treaties in force, signed, and under (re)negotiations, *see* preliminary considerations in section 2.3.1.3.

Justification for score C given

The country is given score C, as there is a country position on including tax treaty provisions allowing source taxation of digital services. The country has initiated relevant measures but it has not adopted such provisions in any of its tax treaties in force (yet).

As regards treaty provisions dealing with source taxation of services, it can be pointed at article 12A introduced by the 2017 UN Model, which covers fees for technical services which can be either provided in person or digitally or article 12B introduced in the 2021 UN Model, which particularly deals with automated digital services.

Uganda has the position of including tax treaty provisions allowing source taxation of digital services. This is based on the EAC Model for negotiations between EAC member countries and non-EAC member countries, which contains:

- a provision (article 12B) on income from automated digital services identical to article 12B of the 2021 UN Model Convention; and
- a provision (article 12) on royalties which generally follows article 12 of the 2021 UN Model Convention but expressly includes in the definition of royalties (paragraph 3) “the use of, or the right to use, …any software” and “the term also includes payments of any kind received as consideration for the use of, or the right to use, any computer software, or the acquisition of any copy of computer software for the purposes of using it”.

It should be noted that, instead, the proposed DRM4D (amended) Uganda Model Convention contains only a provision on fees for technical services, which generally follows article 12A of the 2021 UN Model Convention (i.e. it does not contain the provisions of the EAC Model mentioned above). It is worth considering that the provisions of the proposed DRM4D (amended) Uganda Model Convention do not explicitly provide that they are applicable to digital services. The provisions in these models have a broad definition of technical services, which may be considered to include digital services, but this is an issue of interpretation which is disputed, especially when considering the Commentaries on the 2021 UN Model Convention with regard to both article 12A and article 12B.

© 2024 IBFD

Reportedly, Uganda has already aimed to negotiate tax treaty provisions allowing source taxation of digital services, however, it has not agreed them in any of the tax treaties in force yet. For treaty provisions allocating taxing rights to the source state without the need of PE or fixed base, *see* section 2.3.2.11.; it should be noted that the same issue of interpretation (mentioned in the previous paragraph) arises in respect of these treaty provisions. If the country also aims to continue negotiating the inclusion of such treaty provisions, it is good to realize that agreeing these provisions (especially article 12B) has become more difficult for countries that agree that Pillar One is the right solution for the digitalized economy.

It is also important to note that treaty partners may argue that the recently implemented tax on non-residents providing digital services is an income tax falling into the scope of tax treaties (for details, *see* section 2.3.2.13.). If Uganda finds no success in arguing that such a tax is not an income tax, it should consider adjusting its treaties to allow source taxation of services/digital services (also covering the new self-assessed tax).

© 2024 IBFD

2.4. Key Area of Assessment C: Organizational framework

Description of Performance Indicators of Key Area of Assessment C

Key Area of Assessment C evaluates whether the tax authorities have in place the organizational framework considered relevant for effectively applying measures to deal with selected OECD/G20 BEPS Actions issues, including BEPS Minimum Standards, and other BEPS issues.

Scores A to D assess the level of implementation of an organizational structure in case the country has a position to adopt the relevant recommendations (i.e. measures to deal with selected OECD/G20 BEPS Actions issues, including BEPS Minimum Standards, and other base erosion and profit shifting issues). Score Other applies in cases where the country has a position not to adopt the relevant recommendations (and therefore no organizational structure needs be implemented and, consequently, no assessment of implementation is necessary) or the country has no position, because it has not yet analyzed those recommendations (and therefore it is still unknown whether an organizational structure is required and, consequently, no assessment of implementation is possible at this point), or the country has a position to adopt the recommendations but it has not yet measures that are in force (and therefore an organizational structure is still not required and, consequently, no assessment of implementation is possible at this point).

In particular, each Performance Indicator measures whether the tax authorities have a unit that is specifically instructed to apply measures resulting from the recommendations and whether this unit is operational.

A unit is operational where:

- *its staff members are effectively working or ready to work on the matters they are supposed to carry out and are responsible for;*
- *it has enough officials to deal with the measures resulting from the recommendations considering the economic context of the country; and*
- *it has a well-defined internal work process to deal with the specific base erosion and profit shifting issue and the recommendations.*

The unit is instructed to apply measures resulting from the recommendations if:

- *formally instructed to apply the measures; or*
- *there is awareness among its staff members about the need to apply the measures.*

2.4.1. Performance Indicator C.1.

Performance Indicator and score

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Action recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4).	**A/B, B**
An operational unit of the tax authorities instructed to apply measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations for dealing with base-eroding payments in general and, specifically, outbound payment of service charges, and management and technical fees.	**A/B, B**

© 2024 IBFD

Preliminary considerations

Within MOFPED, the Direct Taxes Section of the Tax Policy Department deals, inter alia, with international taxation including international taxation. Within URA, the International Tax Unit (ITU) and Tax Offices deal, inter alia, with these matters.

Regarding particularly to domestic legislation relating to the extractive industries, MOFPED's TPD also has a specific section, the Natural Resources Section, to deal with the fiscal regime in the oil and gas sector and taxation of natural resources. It has currently three officers out of seven (as provided by according to the Schedule). Also, URA has an Oil and Gas Division that may deal with withholding taxes and permanent establishment issues. This Division is also in charge of the disposal of interests on oil and gas (e.g. licences). It was created about 5 years ago and it has about 33 officers. The Assessment Team has not received more specific information about the Oil and Gas Division and the Natural Resources Section, therefore it has not assessed them.

MOFPED – *Tax Policy Department (TPD) and Direct Taxes Section*

The TPD is under the MOFPED Directorate of Economic Affairs and headed by a Commissioner and an Assistant Commissioner. The TPD has six sections: Direct Taxes, Tax Research, Trade Taxes, Excise Duties, VAT and Natural Resource Taxation. It currently has 24 officials. Officials must rotate within the whole MOFPED every three years, which is decided by a special commission within the department in consultation with the relevant officials.

The main responsibilities of the TPD are:
- formulating tax policy for revenue generation;
- drafting relevant bills on all tax matters;
- setting revenue targets;
- monitoring and evaluating revenue performance, which is done on a weekly basis;
- assessing the impact of tax policies on the economy;
- advising the public and private sectors on tax matters;
- representing the government on all international tax matters and participating in regional integration (including negotiation of all type of treaties, including tax treaties and trade agreements); and
- formulating oil and gas and mining fiscal regimes.

The Direct Taxes Section is in principle responsible for all related international tax matters and is supported by the other sections. There are four officials assigned to this section.

The TPD has well-defined internal work processes, which are established by schedules, defining mandates, work programmes and work timeframe.

A main challenge of the TPD in general, and in particular the Direct Taxes Section, is staffing. The number of TPD officials does not seem enough when considering its responsibilities and the variety of tax matters. For example, there is limited time available for preparation of tax treaty negotiations and even effective participation is a challenge due to other assignments and even sickness.

© 2024 IBFD

The majority of staff within TPD do not undergo specialized and consistent or periodic training over time, but rather learn on the job. Due to the workload, it is difficult for officials to specialize in a particular subject (e.g. tax treaty negotiation) because there is simply no time to be able to study properly.

Also, TPD lacks the authority to decide on relevant tax matters. It would however benefit from having a clear authority in this respect as policy decisions might be delayed due to the availability of relevant authorities (e.g. decisions on specific provisions during tax treaty negotiations may be delayed because it is necessary a decision at a higher level, especially, when it deviates from the treaty policy, but the relevant authority may be unavailable).

URA – International Tax Unit (ITU)

The ITU is part of the Large Taxpayer Office, which is a division under the Domestic Taxes Department (*see* Annex B.4.1. for the organigram of URA). The ITU has 16 tax officials. The ITU is operational and has achieved several milestones regarding audit cases including transfer pricing cases. The ITU has well-defined internal mandates, work processes, work programmes and work timeframe. Like most URA units, the ITU must meet revenue targets, which drives its work as it has a direct impact on the ITU officers' performance appraisal results.

The ITU's main responsibilities are:

- to manage tax compliance of taxpayers with cross-border transactions, which entails assessing risk cases, selecting cases for auditing and carrying out the actual audits;
- to provide advice to MOFPED about possible changes to tax laws concerning international taxation and transfer pricing;
- to provide advice to MOFPED about tax treaty negotiations;
- to participate in tax treaty negotiations (since 2020);
- to support the Business Policy Division in case of rulings involving international taxation and transfer pricing matters; and
- to support other units within URA with regard to international taxation and transfer pricing matters (e.g. in cases of objections, appeals and litigation).

As expressed above, the ITU is operational. However, there are concerns with respect to the capacity of the unit in terms of having an adequate number of officers to carry on the unit's responsibilities. The head of the ITU considers that the number of current officials would be sufficient to fulfill its responsibilities if all officials were fully trained, experienced and operating at their full capacity. However, currently, most of the work of the ITU is under the responsibility of the most experienced officers (two officers), which are supported by another seven officers with various degrees of knowledge and experience. The other six officers, which are more than a third of ITU's staff, are URA new recruits that have in general basic knowledge on taxation and must undergo training on basic domestic taxation and international taxation including transfer pricing. This situation is challenging for the ITU, as it must meet revenue targets set based on the number of officers; however, the uneven composition of the team makes this difficult. Besides, it would be relevant to consider more closely whether 16 officers, even if fully trained and experienced, would be sufficient for managing the international tax compliance of over 300 MNE taxpayers.

Regarding work processes, a main challenge of the ITU for carrying out audits, when dealing with international operations, is to obtain the appropriate information from other countries. Internally, a different unit, the EOI unit (*see* section 2.4.2.), is in charge of handling international EOI requests, and there are clear internal procedures in place for making the requests via the EOI unit. Nevertheless, there are

© 2024 IBFD

substantial delays in receiving information – in some cases, it may take 6 (rather than 3) months or more for Uganda to receive the information from other countries. It is recognized that the delay may be caused by the taxpayer, who may also request additional time. Delays in receiving information may prevent audits to be carried out within the time allowed by the statute of limitations. This is also a major issue for the ITU considering that there is pressure to achieve revenue targets per year, which is already difficult considering that audits of MNEs may take longer than a year (longer than audits of domestic SME taxpayers) and it is even further affected by these delays. To address this, a penalty for failure to provide information within a stipulated time was enacted in 2017.

Concerning staff issues, the main challenges of TPD (in general) and the ITU are:

- to provide substantial training to new recruits;
- to provide regular and consistent training of ITU officers; and
- to have a retention policy that keep trained and experienced officers within the unit for a reasonable period.

For further information on staff issues, *see* section 2.5.1.

URA – Tax Offices

Tax Offices are territorial units spread across the country and are composed of approximately 1300 officials (staff for the Domestic Taxes department). The number of officials of Tax Offices varies depending on the particular territorial jurisdiction. Tax Offices' main responsibilities are to deal with all aspects of taxpayer compliance including all taxes levied in Uganda.

General international tax compliance, which normally involves the review of international tax payments for WHT and VAT on imported services, is handled by the various compliance teams deployed in the Tax Offices but in some instances as needed, they either refer the case or consult with the ITU for guidance.
Treaty application issues are usually handled by the ITU and the Business Policy Unit (in case of a ruling or interpretation is required). For transfer pricing matters, the ITU holds the mandate and exclusively performs this function.

Tax Offices are in principle operational as its tax officials are effectively working on their responsibilities, but reportedly the number of officials is not enough to fully deal with international tax operations. The staffing expertise level per tax office varies according to functions, region and level of business activities. In general, besides dealing with more mechanical work such as withholding taxes on outbound payments, tax offices usually refer these matters to the ITU. Staff of these offices have received limited training on international taxation.

The Assessment Team has not received more specific information about the Tax Offices (i.e. whether the number of officials of Tax Offices is sufficient to fulfill their responsibilities and/or limitations faced by these officials due to the wide scope of taxes under their oversight), therefore the assessment and score in this section and in section 2.5. is given only for the ITU and TPD.

Justification for the score given A/B - B

The country is given score B for the TPD - Direct Taxes Unit, and score A/B for the ITU, as these are operational units within MOFPED and URA instructed to apply measures resulting from the OECD/G20

© 2024 IBFD

BEPS recommendations, but they are not yet fully operational (as specified by this Performance Indicator – *see* description of this at the beginning of section 2.4. and further justification below).

The other aspects of this Performance Indicator are satisfied as:

- officers are generally effectively working on the unit's responsibilities;
- the units have well-defined internal work processes to deal with its responsibilities, including most BEPS issues and related measures including, in the case of Performance Indicator C.1., auditing the correct application of withholding taxes on outbound payments and the EBITDA rule; and
- there is awareness among officers about the need to apply relevant OECD/G20 BEPS recommendations as these have been enacted by the domestic law (i.e. URA is "instructed" to apply the recommendations in the sense of this Performance Indicator following URA's general obligation to administrate and enforce the country tax system.

TPD – Direct Taxes Section

The TPD Direct Taxes Section is not yet fully operational as most staff members are not effectively working yet on the unit's responsibilities, i.e. two out of four officers are new recruits that must undergo additional training and gain relevant experience, and another member is on study leave for a full year. Also, the number of officials does not seem sufficient when considering all responsibilities of this section.

ITU

As expressed above, the ITU is operational and has achieved several milestones regarding audit cases; however, the score *A/B* is given as the ITU is not fully operational in the sense that it has currently capacity issues. The ITU does not have enough officials to deal with the measures as more than a third of ITU staff are new recruits that are not yet effectively working on the unit's responsibilities.

2.4.2. Performance Indicator C.2.

Performance Indicator and score

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply measures resulting from the BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of exchange of tax rulings, i.e., receiving tax rulings from other countries and providing tax rulings to other countries (OECD/G20 BEPS Action 5).	**Other**

Preliminary considerations

© 2024 IBFD

The DRMS has as one of its aims the enhancement of EOI; however, the EOI of tax rulings particularly is not recognized in the strategy.

MOFPED's TPD, and more specifically the Direct Taxes Section supported by the other TPD sections, formulates the tax policy, including international taxation (*see* section 2.4.1. (Preliminary considerations) for a further description of this unit and its main responsibilities). The TPD – Direct Taxes Section has not yet discussed EOI of tax rulings (*see* sections 2.2.1. and 2.3.1.2.).

Within URA, the Business Policy Unit is in charge of providing all tax rulings, and the EOI Unit is in charge of dealing with EOI.

Business Policy Unit

The Business Policy Unit's mandate is generally to direct and support the implementation of domestic tax laws and policies to ensure compliance. This unit is also in charge of providing private rulings, which are binding on URA in relation to the taxpayer to whom the ruling has been issued but are not binding on the taxpayer to whom it is issued (*see* section 2.3.1.2.).

The Business Policy Unit has 29 officers headed by an Assistant Commissioner. The Quality Assurance Section within the Business Policy Unit is mandated with the key role of leading the development of operational guidelines and service standards, and monitoring their implementation across the Business Policy Unit to enhance tax compliance. The section is also responsible for managing tax exemptions to minimize revenue leakages and for coordinating the resolution and account for all audit queries within the Business Policy Unit. The section has two officers headed by a Manager of Quality Assurance (who reports to the Assistant Commissioner Business Policy).

Exchange of Information Unit

The EOI Unit is in charge of dealing with all requests of information from other countries and requests from Uganda to other countries. This unit is operational since 2016 and is part of the Intelligence Division under the Tax Investigations Department (*see* Annex B.4.1.).

The Intelligence Division's mandate is to strengthen the intelligence-led tax compliance approach aimed at proactively deterring tax crime while supporting the investigations and audit functions within the organization through generating casework. The Division has an approved staffing of 39 officers.

The EOI Unit is composed of six officers: the Assistant Commissioner Intelligence, the Manager Intelligence Analysis and four supervisors. The manager is responsible for managing the analysis and sharing of intelligence information to support investigations of tax fraud and enhance compliance. The supervisor of EOI coordinates EOI requests between Uganda and member countries. The supervisor of AEOI acts as an operational competent authority for AEOI and supports the manager in the work with the Global Forum on Transparency and Exchange of Information for Tax Purposes and other regional groupings. The supervisor of intelligence analysis coordinates the collection of intelligence and generates reports to guide investigation and facilitate decision making in relation to tax fraud.

The unit effectively handles the procedure for EOI when there is an internal request from an auditor/investigator assessed and approved by a relevant committee, and also when a request is received from another country. However, the unit deals neither with EOI of tax rulings nor CbC reporting, as these

© 2024 IBFD

are not yet implemented by Uganda. If Uganda were to implement these types of EOI, the unit would need to be formally instructed to deal with them.

The number of officials is considered sufficient for the current level of EOI. The staff undergoes training about EOI legislation, procedures and about the handling and use of the information. Nevertheless, additional training on specific issues may be useful (e.g. BEPS in general and MAP specifically).

It has well-defined internal procedures to carry on its responsibilities.

Justification for the score given Other

The country is given the score "*Other"* since it does not have yet a position to implement the EOI of tax rulings. The related recommendations have not yet been analyzed (*see* section 2.3.1.2.). Therefore, it is still unknown whether an organizational structure is required and, consequently, no assessment of implementation is possible at this point*.*

2.4.3. Performance Indicator C.3.

Performance Indicator and score

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply recommendations resulting from the BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of preferential tax regimes (OECD/G20 BEPS Action 5).	**Other**
An operational unit of the tax authorities instructed to apply measures resulting from the recommendations of the PCT toolkit: Options for Low Income countries' Effective and Efficient Use of Tax Incentives for Investment.	**Other**

Preliminary considerations

The design and drafting of tax incentives is responsibility of the TPD - more specifically, the Tax Research Section, which is supported by the other TPD sections as necessary. TPD is the only department of the government that may formulate tax incentives. For the TPD description, *see* section 2.4.1.

Within URA, the following units deal with tax incentives:
- Business Policy Unit - Quality Assurance Division (*see* section 2.4.2);
- Tax Offices (*see* section 2.4.1.); and
- Research and Innovation Division (*see* below).

In addition, there are other governmental departments dealing specifically with certain tax incentives, for example:

© 2024 IBFD

- Uganda Investment Authority, with respect to industrial parks; and
- Uganda Free Zone Authority, with respect to free zones

Research and Innovation Division

The Research and Innovation Division is mandated to lead the research and development of innovations and various initiatives throughout URA to improve cost effectiveness, service quality and drive organizational growth. The division has an approved staffing of 30 officers (*see* Annex B.4.1.).

Reportedly, based on the interviews during the in-country visit, these units seem to effectively handle the design, implementation and audit of tax incentives applying some of the recommendations of the PCT toolkit (*see* section 2.3.2.8.). However, both the TPD – Tax Research Section and URA – Research and Innovation Division have not yet analyzed the PCT toolkit recommendations. There is no explicit decision by the tax authorities to work on these recommendations. If there were such a policy decision, the units would need to be formally instructed to deal with these types of EOI. Also, reportedly, the number of officers seem to be considered sufficient for the administration of the existing tax incentives considering the number of taxpayers that make use of them. In addition, the relevant units have sufficient internal procedures to carry on its responsibilities.

Justification for the score given Other

The country is given the score "*Other"* since it does not yet have a position to implement the recommendations of the BEPS Minimum Standard on harmful preferential tax regimes nor the recommendations of the PCT toolkit on tax incentives. Such recommendations have not yet been analyzed (*see* sections 2.3.1.1. and 2.3.2.8.). Therefore, it is still unknown whether an additional or specific organizational structure is required and, consequently, no assessment of implementation is possible at this point.

Nevertheless, based on the general considerations above, the Assessment Team considers that the existing organizational structure is operational and manages tax incentives as instructed. If the tax authorities were to decide to adopt specific or all PCT toolkit recommendations, these units would deal with them.

2.4.4. Performance Indicator C.4.

Performance Indicator and score

© 2024 IBFD

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply measures resulting from the BEPS Minimum Standard and also from other recommendations for preventing tax treaty abuse (OECD/G20 BEPS Action 6).	**A/B, B**
An operational unit of the tax authorities instructed to apply measures resulting from recommendations for preventing the artificial avoidance of permanent establishment status (OECD/G20 BEPS Action 7).	**A/B, B**
An operational unit of the tax authorities instructed to apply measures resulting from the BEPS Minimum Standards for making dispute resolution mechanisms more effective (OECD/G20 BEPS Action 14).	**A/B, B**
An operational unit of the tax authorities instructed to deal with the Multilateral Convention to implement tax treaty-related measures to prevent BEPS (MLI).	**Other**
An operational unit of the tax authorities instructed to apply tax treaty measures to tax capital gains resulting from direct or indirect alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the indirect alienation of shares of a domestic company.	**A/B, B**
An operational unit of the tax authorities instructed to apply tax treaty measures allowing source taxation of service fee payments, such as management, consulting or technical service fee payments, made to non-resident enterprises, as well as of payments of rents and royalties.	**A/B, B**
An operational unit of the tax authorities instructed to apply tax treaty measures allowing source taxation of digital services provided by non-residents despite the absence of PE or fixed base.	**A/B, B**

Preliminary considerations

The formulation of the Uganda tax treaty policy, including the country treaty model, and the negotiation of tax treaties is the main responsibility of MOFPED's TPD, specifically, the Direct Taxes Section, which is supported by other TPD sections as necessary. In most tax treaties, MOFPED is generally the competent authority for the tax treaty purposes and delegates this to the URA Commissioner General.

© 2024 IBFD

The ITU and Tax Offices deal with international taxation including all tax treaty-related matters. URA also participates in tax treaty negotiations and, since 2020, this is a specific responsibility of the ITU. The interpretation and application of tax treaties in force is the responsibility of the ITU. With respect to tax treaties in force, Tax Offices may decide to deal with tax treaty matters themselves or refer them to the ITU. If a Tax Office deals directly with these matters, the ITU provides support as required.

See section 2.4.1. "Preliminary considerations" for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges. The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD.

Justification for the score given A/B, B

The country is given score B for the TPD - Direct Taxes Unit, and score A/B for the ITU, as these are operational units within MOFPED and URA instructed to apply measures resulting from OECD/G20 and UN tax treaty recommendations to combat BEPS, but they are not yet fully operational (as specified by this Performance Indicator – *see* description at the beginning of section 2.4.).

This score is given for all tax treaty aspects except for the MLI. For further justification for this score, *see* section 2.4.1., as justifications in that section are also applicable to this Performance Indicator. Besides those justifications, it may be pointed out that the ITU has well-defined internal work processes to deal with its responsibilities, including tax treaty negotiation, interpretation and application. However, concerning tax treaty negotiations, further coordination between the TPD and ITU would be beneficial. It seems that the ITU currently participates in negotiations on an ad-hoc basis without having a complete overview of the tax treaty policy, country treaty model and relevant issues in the particular negotiation. This may limit the input of the ITU for more successful negotiations. As the ITU would effectively apply and interpret tax treaties, its input is very valuable. It also seems that the time for preparation of negotiations is rather limited due to the workload of the officers participating in the negotiation.

Justification for the score given Other

The country is given the score "*Other"* concerning the MLI since it does not yet have a position on whether to ratify this Multilateral Convention or not (*see* section 2.3.2.7.). Therefore, it is still unknown whether an additional or specific organizational structure is required and, consequently, no assessment of implementation is possible at this point. Nevertheless, based on the general above considerations, the Assessment Team considers that, in case the country opts for ratifying the MLI and the TPD and ITU are instructed to deal with it, they would effectively be able to carry on these duties provided they have adequate number of officials with sufficient expertise.

2.4.5. Performance Indicator C.5.

Performance Indicator and score

© 2024 IBFD

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply measures resulting from the Action recommendations for aligning transfer pricing outcomes with value creation (OECD/G20 BEPS Actions 8-10) and transfer pricing documentation – Master File and Local File (OECD/G20 BEPS Action 13).	**A/B, B**
An operational unit of the tax authorities instructed to apply measures resulting from the BEPS Minimum Standard on Country-by-Country Reporting (OECD/G20 BEPS Action 13).	**B**
An operational unit of the tax authorities instructed to apply measures resulting from the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses.	**Other**

Preliminary Considerations

MOFPED's TPD, specifically, the Direct Taxes Section supported by other TPD sections, formulates the tax policy including transfer pricing.

Within URA, the ITU deals exclusively with transfer pricing (i.e. Tax Offices do not deal with transfer pricing).

See section 2.4.1. "Preliminary considerations" for a description of the TPD – Direct Taxes Section and the ITU, their main responsibilities and challenges.

About 75% of the work of the ITU relates to transfer pricing, which is mostly audits of large taxpayers. Due to this and the importance given by the tax authorities to combat transfer pricing abuse, during the interviews during the in-country visit, TPD and ITU officers have expressed their view to consider an organizational separation of the ITU to achieve an even more effective work, i.e. a unit to deal with transfer pricing and a unit to deal with other international taxation matters. A possibility, for example, could be to have an URA Assistant Commissioner in charge of these two units.

Justification for the score given A/B, B

The country is given score B for the TPD - Direct Taxes Unit, and score A/B for the ITU, as these are operational units within MOFPED and URA, which have achieved important milestones within the scope of their responsibilities. The ITU is also instructed to apply measures resulting from the OECD/G20 BEPS recommendations i.e. OECD/G20 BEPS Actions 8-10 and 13 (documentation excluding CbC reporting – *see* below) as these recommendations are incorporated into the domestic legislation. However, these units are not yet fully operational (as specified by this Performance Indicator – *see* description at the beginning of section 2.4.) as there are issues relating to the staff capacity in these units that prevent them for carrying out even more effective work. For further justification for this score, *see* section 2.4.1., as justifications in that section are also applicable to this Performance Indicator.

© 2024 IBFD

Besides the above, it should be noted that, in general, the ITU has well-defined internal work processes to deal with its responsibilities, including transfer pricing. However, concerning transfer pricing documentation, there seems to be a lack of implementation of the OECD/G20 BEPS Action 13 recommendations, i.e. Master File and Local File. Indeed, as domestic legislation provides the application of the OECD TP Guidelines as modified from time to time, the Master File and Local File should be implemented, for example, by establishing legislative and/or administrative procedures requiring for this documentation to be filed directly with URA within specific timeline, using specific forms, etc.; however, it seems such legislative and/or administrative procedures are not yet established.

Justification for the score given B

The country is given the score "*B"* concerning OECD/G20 BEPS Action 13 recommendations on CbC reporting as ITU, due to its existing responsibilities, would be exclusively responsible for CbC reporting, but this unit is not fully operational (yet) due to staff capacity issues and it is also not instructed to apply CbC reporting (yet). TPD – Direct Taxes Section is also not fully operational due to staff capacity issues. For further information concerning the ITU and Direct Taxes Section capacity staff issues, *see* section 2.4.1.

Indeed, as stated in section 2.3.1.4., the Uganda tax authorities have not yet started to implement the country strategy to have in place AEOI on CbC reporting. It seems that both ITU and TPD - Direct Taxes Section were not fully aware of the DRSM strategy on this matter. Nevertheless, both units consider that the country would benefit from receiving country-by-country reports from other countries, so this should be investigated and considered for the future.

Justification for the score given Other

The country is given the score "*Other"* concerning the recommendations of the PCT toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses (*see* section 2.3.2.9.) as there is a country position not to adopt the PCT toolkit recommendations. Such a policy decision is in principle the responsibility of the TPD - Direct Taxes Section, however the ITU has a position not to use the recommendations of the PCT toolkit in their benchmarking studies because it is related to sectors that are not relevant to Uganda. It is therefore still unknown whether an additional or specific organizational structure is required and, consequently, no assessment of implementation is possible at this point and hence the score *Other.*

2.4.6. Performance Indicator C.6.

Performance Indicator and score

Performance Indicator	Score
An operational unit of the tax authorities instructed to apply measures resulting from the Action recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	B

© 2024 IBFD

Preliminary Considerations

MOFPED's TPD, specifically the Tax Research Section, is in charge of producing tax statistics. For a description of the TPD and its main responsibilities and challenges, *see* section 2.4.1. (Preliminary considerations). There are four officers and three external consultants assigned to the Tax Research Section. In order to carry on its duties, this section relies on the information provided by URA as well as other government departments (*see* section 2.3.2.5.).

Within URA, the Research and Innovation Unit, which is part of the Information Technology Department, has as its main role to carry out research on different tax policies and inform other URA departments and the government in general. This entails producing statistical reporting for internal use and also for public reports.

Justification for the score given B

The country is given the score B, as there are units within MOFPED and URA that are operational; however, they are not yet instructed to apply measures resulting from the recommendations.

Both the TPD Tax Research Section and URA Research and Innovation Unit are operational in the sense that they have sufficient number of officials effectively working on the matters they are responsible for, considering the economic context of the country, and they have internal work processes or protocols to this effect. Reportedly, these units do not seem to have specific challenges and they are able to carry on their duties satisfactorily, as requested.

However, these units are not instructed to apply any measures resulting from the Action recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11). They neither collect information on BEPS issues and/or revenue impact of adopted BEPS measures nor have protocols to this effect. Nevertheless, reportedly, if these units were to be formally instructed, they would effectively be able to carry out these duties.

2.4.7. Performance Indicator C.7.

Performance Indicator and score

Performance Indicator	Score
A tax authorities' operational unit instructed to apply domestic measures resulting from the practical guidance of the PCT toolkit: The Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country – domestic law aspects.	**A/B, B**

© 2024 IBFD

Preliminary considerations

MOFPED's TPD, specifically the Direct Taxes Section supported by the other TPD sections, formulates the tax policy, including international taxation.

Within URA, the ITU and Tax Offices deal with international taxation, including domestic legislation on the taxation of offshore indirect transfers of assets located in the country (offshore indirect transfers). Tax Offices may decide to deal with these themselves or refer them to the ITU. If a Tax Office deals directly with these matters, the ITU provides support as required.

See section 2.4.1. "Preliminary considerations" for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges. The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD.

Justification for the score given A/B, B

The country is given the score B for the TPD - Direct Taxes Unit, and score A/B for the ITU, as these are operational units within MOFPED and URA that have achieved important milestones within the scope of their responsibilities. ITU is also instructed to apply measures resulting from PCT toolkit recommendations as these recommendations are incorporated into the domestic legislation. However, these units are not yet fully operational (as specified by this Performance Indicator – *see* description at the beginning of section 2.4.) as there are issues relating to the staff capacity in these units that prevent them for carrying out even more effective work. For further justification for this score, *see* section 2.4.1., as justifications in that section are also applicable to this Performance Indicator.

Uganda has introduced domestic legislation on the taxation of offshore indirect transfers as designed by the TPD, which follows the practical guidance of the PCT toolkit. Accordingly, ITU is instructed to apply the recommendations following URA's general obligation to administrate and enforce the country tax system.

Concerning the tax treaty aspects of offshore indirect transfers, *see* section 2.4.4.

2.4.8. Performance Indicator C.8.

Performance Indicator and score

Performance Indicator	Score
A tax authorities' operational unit instructed to apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**A/B, B**

Preliminary considerations

© 2024 IBFD

MOFPED's TPD, specifically the Direct Taxes Section, supported by the VAT Section and other TPD sections, formulates the tax policy, including international taxation and specific VAT measures to deal with the digitalization of the economy.

Within URA, the ITU and Tax Offices deal with the taxation of taxpayers carrying out international operations, including VAT. Tax Offices may decide to deal with these themselves or refer them to the ITU. If a Tax Office deals directly with these matters, the ITU provides support as required.

See section 2.4.1. "Preliminary considerations" for a description of the TPD, ITU and Tax Offices, their main responsibilities and challenges. The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD.

Justification for the score given A/B, B

The country is given score B for the TPD and score A/B for the ITU, as these are operational units within MOFPED and URA that have achieved important milestones within the scope of their responsibilities. ITU is also instructed to apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures as these recommendations are incorporated into the domestic legislation. However, these units are not yet fully operational (as specified by this Performance Indicator – *see* description at the beginning of section 2.4.) as there are issues relating to the staff capacity in these units that prevent them for carrying out even more effective work. For further justification for this score, *see* section 2.4.1., as justifications in that section are also applicable to this Performance Indicator.

Uganda has introduced VAT legislation to tackle base erosion and profit shifting due to the digitalization of the economy, which follows BEPS Action 1 recommendations (*see* section 2.3.2.12.). Accordingly, the relevant URA units are instructed to apply the recommendations following URA's general obligation to administrate and enforce the country tax system.

2.4.9. Performance Indicator C.9.

Performance Indicator and score

Performance Indicator	Score
A tax authorities' operational unit instructed to apply unilateral (domestic) tax measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations to tackle base erosion and profit shifting due to the digitalization of the economy.	**A/B, B**

Preliminary considerations

© 2024 IBFD

MOFPED’s TPD, more specifically the Direct Taxes Section supported by the other TPD sections, formulates the international tax policy, including unilateral (domestic) measures for dealing with the digitalization of the economy. The TPD is carrying out specific research and took concrete actions to deal with the taxation of the digitalized economy, with recent legislation implemented (*see* section 2.3.2.13.).

Within URA, the ITU and Tax Offices deal with international taxation, including domestic legislation for the taxation of the digitalized economy, such as a tax on non-residents providing digital services in Uganda. *See* section 2.4.1. “Preliminary considerations” for a description of the TPD, ITU and Tax Offices, their main responsibilities and challenges. The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD.

Justification for the score given A/B, B

The country is given the score B for the TPD - Direct Taxes Unit, and score A/B for the ITU, as these are operational units within MOFPED and URA, which have achieved important milestones within the scope of their responsibilities. ITU is also instructed to apply measures resulting from UN Tax Handbook recommendations to deal with the digitalization of the economy as specific provisions are incorporated into the domestic legislation. However, these units are not fully operational yet (as specified by this Performance Indicator – *see* description at the beginning of section 2.4.) as there are issues relating to the staff capacity in these units that prevent them for carrying an even more effective work. For further justification for this score, *see* section 2.4.1., as justifications in that section are also applicable to this Performance Indicator.
As mentioned above, Uganda has recently introduced legislative provisions to tackle base erosion and profit shifting due to the digitalization of the economy (*see* section 2.3.2.13.). Accordingly, the relevant URA units are instructed to apply the recommendations following URA’s general obligation to administrate and enforce the country’s tax system.

© 2024 IBFD

2.5. Key Area of Assessment D: Expertise framework.

Description of Performance Indicators of Key Area of Assessment D

Key Area of Assessment D evaluates whether the staff of the tax authorities have the expertise necessary to effectively apply measures to deal with selected OECD/G20 BEPS Actions issues, including BEPS Minimum Standards, and other base erosion and profit shifting issues.

Scores A to D assess the level of staff expertise in case the country has a position to adopt the relevant recommendations (i.e. measures to deal with selected OECD/G20 BEPS Actions issues, including BEPS Minimum Standards, and other base erosion and profit shifting issues). Score Other applies in cases where the country has a position not to adopt the relevant recommendations (and therefore no staff expertise is required and, consequently, no assessment is necessary) or the country has no position because it has not yet analyzed those recommendations (and therefore it is still unknown whether staff expertise is required and, consequently, no assessment is possible at this point).

Each Performance Indicator evaluates (i) whether the staff have sufficient expertise to apply the measures resulting from the recommendations and (ii) whether that expertise is effectively applied.

The staff have sufficient expertise where they have sufficient expert skills or knowledge in the particular field given the situation in the country. To determine if the staff have sufficient expertise, staff self-grading and more objectively, specific training received and years of experience on the specific field (e.g. TP or EOI) are to be mentioned and will be considered in the assessment taking into account the situation of the country.

The expertise is effectively applied in practice if the staff unit's expertise matches with tasks assigned to that unit (e.g. staff with expertise on TP work in the TP unit) and the unit achieves its desired (institutional) targets.

2.5.1. Performance Indicator D.1.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4).	**A**
Staff expertise to effectively apply measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations to deal with base-eroding payments in general and, specifically, payment of service charges, management and technical fees.	**A**

Preliminary considerations

Within MOFPED, the TPD, specifically the Direct Taxes Section supported by the other TPD sections formulates the international tax policy including the taxation of outbound payments and limitation of interest deductibility. Within URA, the ITU and the Tax Offices deal with international taxation.

© 2024 IBFD

Concerning the expertise for tax treaty aspects of outbound payments, *see* section 2.5.4.

See section 2.4.1. “Preliminary considerations” for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges.

Regarding the extractive industries, the URA Oil and Gas Division may also deal with withholding taxes and permanent establishment issues. Most of the personnel in this division (about 33 officers) have done full-year Master’s programmes on Oil and Gas, which do not directly deal with international tax, or have an Advanced Diploma in International Taxation (ADIT(UK)). In terms of experience, these officers have on average less than 10 years’ experience at URA. MOFPED’s TPD Natural Resources Section deal with the fiscal regime in the oil and gas sector and taxation of natural resources. Most of the personnel in this division have done full-year Master’s programmes in Oil and Gas and have followed short-term training on international taxation and/or oil and gas.

The Assessment Team has not received more specific information about the Tax Offices, the Oil and Gas Division and the Natural Resources Section, therefore the assessment and score in this section is given only for the TPD and ITU expertise.

The following considerations relate to the staff expertise of these units.

MOFPED – TPD and Direct Taxes Section

The TPD consists of 24 officers assigned to six sections. Of these, 6 officers are very senior (more than 9 years of experience at the TPD), 4 are senior (5-8 years of experience at the TPD), 12 officers are junior (1-5 years of experience at the TPD) and 2 officers are rather new recruits (less than 1 year of experience at the TPD).

The Direct Taxes Section is composed of four officers of which one officer is very senior and three are rather junior officers (one of these is currently on study leave).

Officials working in the Tax Policy must have a university degree as a basic entry requirement. 100% of TPD officers also have postgraduate and/or professional education, including Master’s degrees or professional qualifications such as CPA (Uganda), ACCA (UK), CFA (US), ICSA (UK) and PODITRA (Postgraduate Diploma on Tax and Revenue Administration). As mentioned above, the officers’ professional education is mostly in accounting and finance, and it is pursued on the basis of self-study and sitting exams. These professional/postgraduate programmes include some aspects of international taxation, but none of these programmes focuses on international taxation.

Regarding short-term training, 100% of TPD staff have also followed short-term courses on international taxation provided by different institutions, such as Duke University, IBFD, Leiden University (ITC), OECD (Global Relations), PCT and UN, WU (TP Center) and University of Pretoria.

Besides academic and professional education, TPD officers mostly learn international taxation on the job. External consultants working with TPD are also relevant for training the staff of TPD.

Regarding training, TPD expressed a general preference for face-to-face short-term training. This form of training is preferred to online training because it is difficult to follow online courses in addition to the normal workload during working hours. Also, it is less effective to follow online courses for a longer period.

© 2024 IBFD

However, face-to-face trainings also have limitations (for example, a full week abroad may be very intensive and it may be difficult to balance it with the ordinary workload). Online courses on specific topics are more useful when provided to officers with a certain level of seniority. As three officers are new recruits, they must still undergo a general substantial training on international taxation.

The MOPFED allocates an annual budget to each department, to be used for both short-term and long-term trainings. Also, development partners or donors provide funding for trainings (e.g. USAID have funded substantial training for TPD and ITU within the DRSM4 project). Training to new recruits is provided based on decisions of the officer responsible for trainings and the relevant managers. New full-time recruits may be given the possibility to pursue a Master's degree instead of short-term courses.

One of the main challenges of the TPD is to develop an effective retention policy. About 50% of the TPD staff have left for other government departments or the private sector. In average, officers stay in the unit for 5 years. The main reason behind this seems to be the lack of career prospects and the remuneration. A main reason behind this may also be the formal structure of MOFPED, which may make it difficult to promote officers. For example, there may be only one principal officer per section, therefore a senior officer cannot be promoted to principal unless the principal is promoted to assistant commissioner or leaves the service. Considering the relevance of the TPD responsibilities, a special plan to recruit, train and retain qualified officers seems to be required.

Another issue relating to short-term trainings is the selection of the participants. Within MOFPED's TPD, the participants are usually selected by the Assistant Commissioner in consultation with the candidate. The timing of the training is also essential as TPD staff may not be available for training during specific periods of each year (e.g. during a period of budget preparation).

URA – ITU

The ITU is currently composed of 16 officers, of which 2 officers are very senior (9 and 10 years of experience at the ITU), 5 are senior (5-8 years of experience at the ITU), 3 are junior (1-3 years of experience at the ITU) and 6 are new recruits (less than 6 months of experience at the ITU).

Officials working at URA must have a university degree as a basic entry requirement. Approximately 60% of the ITU staff also have postgraduate and/or professional qualifications, including Master's degrees or professional qualifications such as CPA (Uganda), ACCA (UK), CFA (US), ADIT (UK) and ICSA (UK). The officers' professional education is mostly in accounting and finance and it is pursued on the basis of self-study and sitting exams. The ADIT (UK) is the only professional qualification dealing specifically with international taxation. Master's programmes also deal with international taxation, but only one official has such an academic degree (full year Master's on International Taxation in the Netherlands).

Approximately 60% of ITU staff have followed short-term courses on international taxation provided by different institutions, such as IBFD, Leiden University (ITC), OECD (Global Relations), PCT, UN, University of Lausanne (Tax Policy Center) and WU (TP Center). After the COVID-19 pandemic, OECD, PCT and UN have continued providing online live trainings.

Besides academic and professional education, ITU's preference would be to have face-to-face short-term training for senior officers, with interaction among participants and instructors. Trainings involving participants and instructors from different countries are considered very useful, as participants learn from the experiences, problems and solutions of other colleagues (e.g. OECD (Global Relations) organized

© 2024 IBFD

these type of trainings). ITU considers that short-term training should have a different format and level of depth depending on the participants (for example, new recruits may benefit from undergoing online (recorded) training first and online (live) training and/or face-to-face training afterwards).

As six officers are new URA recruits, one of the main challenges for ITU is to train them on basic domestic taxation and international taxation. The policy of having new recruits starting immediately within ITU entails challenges and has pros and cons. On the one hand, it would be preferable that officials have a certain level of knowledge on domestic taxation before working at the ITU, where they may gain knowledge on international taxation on the job. On the other hand, new recruits have more flexibility to learn and adapt to the working processes of the ITU, have good (i.e. the latest) technical knowledge and are also motivated by (new) career prospects.

Another main challenge for ITU is to develop an effective retention policy. ITU has ambitious revenue targets, which have been achieved and even exceeded. However, there is no hierarchy among ITU officials (e.g. junior, senior, principal, manager), and this is also reflected in their remunerations. At a more general level, ITU officials usually have the same salary as other URA officials that may carry on responsibilities with lower qualification requirements and/or more routinary and/or stressful work. As a consequence, more senior members of the ITU may experience a lack of career prospects, they may become less motivated or even decide to move to the private sector, which would result in a loss of URA expertise. This may also be a reason why it is necessary to hire new recruits directly for the ITU. URA officials from other units may be less motivated to apply and join the ITU as then they would then have to assume more responsibilities and work without appropriate recognition and increase in their remuneration.

Challenges in terms of short-term trainings are the selection of the right participants depending on their level of expertise, responsibilities and availability. Selection of URA participants for training is done usually by Assistant Commissioners in the relevant divisions, who request managers and supervisors to nominate a number of officers. There is usually an even allocation of officers per department or unit, which may imply that officers with more limited level of knowledge on the training matter, who may not work in that particular matter, would attend the training (e.g. a training on transfer pricing, which is the exclusive responsibility of the ITU, would also be attended by officials of various other units). These officers are assigned to attend but in practice their interest and motivation on the topic is rather limited as the training is rather informative for them. URA has taken steps to address this issue and currently the Assistant Commissioner for Learning and Development tracks the appropriate units/staff that would benefit from a particular training. Also, each unit should submit a training plan identifying their training needs, then the appropriate training, when approved and allocated, should be ring-fenced for the unit.

The timing of the training also plays a major role in the attendance of the appropriate officers. In the case of the ITU, it would be very relevant to plan trainings between July-October and January-March. In other months, it is much more difficult to guarantee a proper participation due to the unit’s responsibilities.

Training should also be relevant to the specific needs and capacities of URA.

URA – Tax Offices

The Assessment Team could not interview or received direct answers to the Questionnaire from officers from Tax Offices.

© 2024 IBFD

In principle, as these officers must deal with all type of taxes and taxpayers, their level of expertise on international taxation is understandably limited compared with ITU officers. Accordingly, they deal with more routine aspects of international taxation matters (e.g. levying of WHT on outbound payments) and would rather refer to the ITU for other matters. The level of expertise on international taxation may also vary substantially depending on the specific Tax Office where these officers are based (which may deal to a lesser extent with international taxation). The level of training of these officers on international taxation may also be more limited than the ITU officers.

As the Assessment Team has not received more specific information about officers from Tax Offices, the assessment in this section does not consider the level of expertise on international taxation of these officers, and then the score is given only for the expertise of officers from the ITU and TPD.

Justification for score A

The country is given score A, as some officers have sufficient expertise on the base eroding and profit shifting issue and the recommendations (limiting base erosion involving interest deductions and other financial payments and base-eroding payments), and their expertise is in principle applied in practice (as stated for this Performance Indicator, *see* beginning of section 2.5.).

There are TPD and ITU senior officers with sufficient expertise to design, evaluate and/or apply the measures resulting from the recommendations, which are adopted by domestic legislation. The Direct Taxes Section and ITU senior officers have sufficient knowledge concerning taxation of outbound payments in general and, specifically, payment of service charges, management and technical fees, and also concerning the application of the EBITDA rule, which has been introduced recently by the country. Evidence of this is the identification of problems encountered with the application of the EBITDA rule and possible solutions being discussed by the ITU with the TPD to make the rule more effective (*see* sections 2.3.2.1. and 2.3.2.11.). Self-grading among senior officers is 10 and 7 out of 10 (where 1 is the most basic level and 10 the most advanced).

However, the overall level of expertise among both TPD and ITU officers is not sufficient, and there is a rather substantial gap between most senior members and other members of these units (new recruits in particular).

Furthermore, the expertise of most senior officers may not be fully effectively applied in practice due to workload and staff capacity issues. The number of senior members with the required expertise is rather limited in both the TPD Direct Taxes Section and ITU (five or less officers in total). The time available to these officers to properly work on this matter is quite limited when considering their responsibilities and workload. Furthermore, within TPD, some experienced officers may currently be working in other TPD Sections that do not deal with international taxation due to MOFPED's rotation policy. Indeed, the rotation policy is a challenge for TPD as highly specialized people may be replaced by less experienced people that require time to acquire the same level of expertise; accordingly, there is a vulnerability as regards maintaining the same high level of expertise (*see above* Preliminary considerations).

In general terms, short-term training received from various organizations (including ATAF, IBFD, International Law Institute, Malaysian Tax Academy, OECD Global Relations, UN Tax Cooperation and University of Pretoria) on OECD/G20 BEPS Action 4 and/or base eroding payments has been part of a more general training on international taxation and BEPS and, accordingly, has been rather limited on the specific recommendations, potential issues and alternative best practices.

© 2024 IBFD

In addition, in the ITU and TPD more junior officers and new recruits have limited knowledge on OECD/G20 BEPS Action 4 recommendations and must undergo training on these.

See section 2.5.4. for the assessment of staff expertise concerning related to tax treaty aspects.

2.5.2. Performance Indicator D.2.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of exchange of tax rulings (OECD/G20 BEPS Action 5).	**Other**

Preliminary considerations

The DRMS has as one of its aims the enhancement of EOI; however, the EOI of tax rulings particularly is not recognized in the strategy (*see* sections 2.2.1. and 2.3.1.2.).

MOFPED's TPD, and more specifically the Direct Taxes Section supported by the other TPD sections, formulates the tax policy, including international taxation. Within URA, the Business Policy Unit is in charge of providing all tax rulings, and the EOI Unit is in charge of dealing with EOI (*see* sections 2.4.1. and 2.4.2. (Preliminary considerations) for a further description of these units and their main responsibilities).

Justification for the score given Other

The country is given score "*Other"* since it does not have yet a position to implement the EOI of tax rulings. The related recommendations have not yet been analyzed (*see* section 2.3.1.2.). Therefore, it is still unknown whether staff expertise is required and, consequently, no assessment is possible at this stage.

2.5.3. Performance Indicator D.3.

Performance Indicator and score

© 2024 IBFD

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of preferential tax regimes (OECD/G20 BEPS Action 5).	**Other**
Staff expertise to effectively apply measures resulting from the recommendations of the PCT toolkit: Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment.	**Other**

Preliminary considerations

The design and drafting of tax incentives is the responsibility of the TPD - more specifically, the Tax Research Section. For the TPD description, *see* section 2.4.1., and for TPD staff expertise description, *see* section 2.5.1.

Within URA, the following units deal with tax incentives:
- Business Policy Unit - Quality Assurance Division (*see* section 2.4.2);
- Tax Offices (*see* section 2.4.1.); and
- Research and Innovation Division (*see* section 2.4.1.).

See also section 2.5.3. for a further description of these units.

Justification for the score given Other

The country is given the score "*Other"* since it does not yet have a position to implement the recommendations of the BEPS Minimum Standard on harmful preferential tax regimes nor the recommendations of the PCT toolkit on tax incentives. Such recommendations have not yet been analyzed (*see* section 2.3.2.8.). Therefore, it is still unknown whether staff expertise is required and, consequently, no assessment of implementation is possible at this point.

2.5.4. Performance Indicator D.4.

Performance Indicator and score

© 2024 IBFD

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard and other Action recommendations for preventing tax treaty abuse (OECD/G20 BEPS Action 6).	B
Staff expertise to effectively apply measures resulting from the Action recommendations for preventing the artificial avoidance of permanent establishment status (OECD/G20 BEPS Action 7).	B
Staff expertise to effectively apply the OECD/G20 BEPS Minimum Standard for making dispute resolution mechanisms more effective (OECD/G20 BEPS Action 14).	C
Staff expertise to effectively deal with the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting.	Other
Staff expertise to effectively apply tax treaty measures to tax capital gains resulting from direct or indirect alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the indirect alienation of shares of a domestic company.	B
Staff expertise to effectively apply tax treaty measures allowing source taxation of service fee payments, such as management, consulting or technical service fee payments, made to non-resident enterprises, as well as of payments of rents and royalties	B
Staff expertise to effectively apply tax treaty measures allowing source taxation of non-resident digital services despite the absence of PE or fixed base.	C

Preliminary considerations

Within MOFPED, the TPD Direct Taxes Section, supported by the other TPD sections, formulates the tax treaty policy, including the country treaty model, and has a leading role in the negotiation of tax treaties. The Natural Resources Section may also deal with tax treaty matters relating to the oil and gas sector and taxation of natural resources.

© 2024 IBFD

Within URA, the ITU and Tax Offices deal with international taxation including all tax treaty-related matters. The ITU is in principle directly responsible for tax treaty matters including negotiation and interpretation. With regard to tax treaties in force, Tax Offices may decide to deal with tax treaty matters themselves or refer them to the ITU. The Oil and Gas Division may also deal with tax treaty matters relating to withholding taxes and permanent establishment.

See section 2.4.1. "Preliminary Considerations" for a description of the organization of TPD, ITU and Tax Offices and their main responsibilities and challenges, and section 2.5.1. "Preliminary Considerations" for a general description of the staff expertise of these units.

The Assessment Team has not received specific information about the Tax Offices, the Oil and Gas Division and the Natural Resources Section, therefore the assessment and score in this section is given only for the TPD and ITU expertise.

Justification for score B

The country is given score B, as some of the staff have sufficient expertise on the BEPS issues and the recommendations, but the expertise is not effectively applied in practice (as stated for these Performance Indicators, *see* beginning of section 2.5.).

This score relates to staff expertise to effectively apply:
- tax treaty measures resulting from the BEPS Minimum Standard and other Action recommendations for preventing tax treaty abuse (OECD/G20 BEPS Action 6);
- tax treaty measures resulting from the Action recommendations for preventing the artificial avoidance of permanent establishment status (OECD/G20 BEPS Action 7);
- tax treaty measures to tax capital gains resulting from direct or indirect alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the indirect alienation of shares of a domestic company; and
- tax treaty measures allowing source taxation of service fee payments, such as management, consulting or technical service fee payments, made to non-resident enterprises, as well as of payments of rents and royalties.

Currently, there are TPD and ITU officers with sufficient expertise to formulate the tax treaty policy and negotiate tax treaty provisions resulting from the recommendations and, if such provisions are effectively included in tax treaties in force, to interpret and apply them. Particularly, TPD and ITU's most senior officers have sufficient expertise concerning tax treaty matters, in general, and OECD/G20 BEPS treaty recommendations and other non-OECD/G20 BEPS recommendations, which have recently been introduced in the proposed DRM4D (amended) Uganda Model Convention and EAC Model Convention.

The evidence for this is:
- academic (foreign Master's in international taxation) and/or professional studies;
- working experience of more than 10 years on tax treaty matters including negotiations;
- several short-term trainings (in general of one to two weeks of duration) on tax treaty negotiations and tax treaties, imparted by different organizations, regularly on average on a yearly basis (including EAC (GIZ/IMF technical cooperation), IBFD, ICT Leiden, IMF, International Development Law Organization, Malaysian Tax Academy, OECD Global Relations and UN Tax Cooperation). Although specific training

© 2024 IBFD

on specific issues has been more limited, for example, PE and attribution of profits to PEs and indirect transfer of assets;
- most senior officer's self-grading (7-10 out of 10, where 1 is the most basic level and 10 the most advanced); and
- the content of latest tax treaty policy as stated in strategy documents, the updated Uganda tax treaty model and the EAC tax treaty model, and a clear policy in on-going treaty negotiations (*see* sections 2.3.1.3. and 2.3.2.2.).

However, the overall level of expertise among both TPD and ITU officers is not sufficient, and the expertise of most senior officers may not be fully effectively applied in practice due to workload and staff capacity issues. *See* section 2.5.1. for further information on this. Indeed, the time available to properly work on tax treaty matters is quite limited when considering responsibilities and workload (for example, there would not be sufficient time for proper preparation of tax treaty negotiations).

The ITU is keen on developing further expertise on indirect transfer of assets issues and it has been successfully auditing taxpayers on this, particularly, the practical application of the domestic rule and the potential restrictions of tax treaties in force, and then the relevance of agreeing specific tax treaty provisions in on-going and future negotiations (*see also* section 2.5.7.).

The ITU is also aware of the relevance of tax treaty provisions allowing source taxation, specifically those concerning technical service fees (*see also* section 2.5.1.).

Reportedly, the expertise on PE matters may be more limited. There are some ongoing audits concerning PEs, mostly about attribution of profits to PEs, but not about artificial avoidance of PEs. In practice, there are not many cases or audits on PE and branch taxation, as the issue of attribution of profits is rather difficult and the perceived impression is that there is not much revenue that can be derived from it. Tax Offices generally do not deal with PE/branch issues. Training on PEs and attribution of profits to PEs and other aspects of international taxation, relating particularly to the extractive industries, would be very relevant considering the importance of this sector for Uganda.

Justification for score C

The country is given score C, as the staff has awareness, but not sufficient expertise on the BEPS issues and the recommendations (as stated for these Performance Indicators, *see* beginning of section 2.5.).

This score relates to the staff expertise to effectively apply:
- the BEPS Minimum Standard for making dispute resolution mechanisms more effective (OECD/G20 BEPS Action 14); and
- tax treaty measures allowing source taxation of non-resident digital services despite the absence of PE or fixed base.

There are currently TPD and ITU officers with sufficient expertise to formulate the treaty policy and negotiate tax treaty provisions and, if such provisions are effectively included in tax treaties in force, to interpret and apply them. TPD and ITU most senior officers have sufficient expertise concerning tax treaty matters in general. However, the staff expertise seems to be more limited with regard to the OECD/G20 BEPS Action 14 Minimum Standard, which has 21 elements that deal with tax treaty provisions, domestic legislation and application in practice. Similarly, as the tax authorities are studying and formulating a tax policy concerning the taxation of the digitalized economy, there is awareness and a certain level of expertise on possible

© 2024 IBFD

solutions, but such expertise may still be strengthened, particularly, concerning the interaction of possible domestic rules with tax treaties.

The evidence for this is as follows:
- the staff self-grading is generally much lower on these matters;
- academic and/or professional studies has more limited coverage on these matters;
- short-term trainings have been limited on these particular matters; and
- domestic legislation and administrative provisions are more limited, such as the practical experience with tax treaty dispute resolution (*see* sections 2.3.1.5., 2.3.2.13. and 2.3.2.14.).

Justification for score Other

The country is given score "*Other"* regarding the MLI because it does not yet have an official position on whether to sign it or not (*see* section 2.3.2.7.). Therefore, it is still unknown whether staff expertise is required and, consequently, no assessment is possible at this stage.

Reportedly, some TPD officers have studied the MLI provisions and discussed the pros and cons for Uganda. This expertise could still be strengthened to adopt a position at Cabinet level.

2.5.5. Performance Indicator D.5.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for aligning transfer pricing (TP) outcomes with value creation (OECD/G20 BEPS Actions 8-10).	**B**
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard and other Action recommendations for transfer pricing documentation and Country-by-Country Reporting (OECD/G20 BEPS Action 13).	**C**
Staff expertise to effectively apply measures resulting from the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparability Data for Transfer Pricing Analyses.	**Other**

Preliminary considerations

Within MOFPED, the TPD Direct Taxes Section, supported by the other TPD sections, formulates the international tax policy, including TP. Within URA, the ITU deals exclusively with TP matters.

© 2024 IBFD

See section 2.4.1. “Preliminary considerations” for a description of the ITU and TPD Direct Taxes Section, their main responsibilities and challenges, and section 2.5.1. “Preliminary considerations” for a general description of the staff expertise of these units.

Justification for score B

The country is given score B, as some officers have sufficient expertise on the BEPS issue and the recommendations, but the expertise is not effectively applied in practice (as stated for this Performance Indicator, *see* beginning of section 2.5.).

This score relates to the staff expertise to effectively apply measures resulting from the Action recommendations for aligning TP outcomes with value creation (OECD/G20 BEPS Actions 8-10).

There are currently ITU officers with sufficient expertise to administer domestic transfer pricing legislation, including carrying out TP audits, which refers directly to the OECD TPG (that have incorporated the recommendations of OECD/G20 BEPS Actions 8-10). This is the case for the most senior staff.

The evidence for this is:

- academic (foreign Master’s in international taxation) and/or professional studies;
- number of years working on transfer pricing matters;
- several short-term trainings on transfer pricing imparted by different organizations (including IBFD, ITC Leiden, Malaysian Tax Academy, WU Vienna, OECD Global Forum training events, UN), including regular ATAF meetings to discuss specific practical cases of different jurisdictions, and they have also attended various conferences on this topic; and
- staff self-grading (7 out of 10, where 1 is the most basic level and 10 the most advanced).

Currently, more than 75% of the work of the ITU relates to TP audits. The ITU has achieved important milestones concerning TP auditing of MNEs and it has generally been able to meet its revenue targets (*see* section 2.3.2.4.).

However, the overall level of expertise among both TPD and ITU officers is not sufficient. Furthermore, the expertise may not be effectively applied in practice (as stated for this Performance Indicator). The number of senior members with the required expertise is limited (three officers within the ITU) and their time available to properly work on TP audits is quite limited when considering their responsibilities and workload (*see* section 2.5.1. for further information on this, which is also applicable for TP matters).

Justification for score C

The country is given score C, as the staff has awareness, but not sufficient expertise, of the BEPS issue and the recommendations (as stated for this Performance Indicator, *see* beginning of section 2.5.).

This score relates to the staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action 13 recommendations for transfer pricing documentation, i.e. CbC reporting, Master File and Local File.

There are currently ITU officers with sufficient expertise to administer domestic transfer pricing legislation, including carrying out TP audits, which refers directly to the domestic application of the OECD TPG (which

© 2024 IBFD

incorporated the recommendations of OECD/G20 BEPS Actions 13) (*see also* the justification for score *B* above). However, this expertise is more limited on TP documentation.

Indeed, as stated in section 2.3.1.4., the Uganda tax authorities have not yet started to implement the country strategy to have in place AEOI on CbC reporting. It seems that both ITU and TPD - Direct Taxes Section were not fully aware of the DRSM strategy on this matter and have not fully analyzed all the requirements to implement CbC reporting and its potential use by URA. Further expertise on these matters seems to be desirable due to the challenges to deal with TP.

Concerning the Master and Local Files, when interviewed on these documentation requirements, ITU officers answered that they apply but did not elaborate on the content, possible results and/or benefits of enforcing them. The Assessment Team concluded that in practice there is no full administrative implementation and use of this documentation (*see* section 2.3.2.6.).

Justification for score Other

The country is given score "*Other*" as regards the staff expertise to apply measures relating to the PCT toolkit recommendations to address the lack of comparables data, because reportedly ITU has a position not to adopt these recommendations (*see* section 2.3.2.9.), therefore staff expertise is not (yet) required and, consequently, no assessment is possible at this stage.

However, from the interviews during the in-country visit, it seems that TPD and the ITU have not fully analyzed the PCT toolkit recommendations to deal with lack of comparability data. Further expertise on these matters seems to be desirable due to the challenges dealing with the lack of comparables.

2.5.6. Performance Indicator D.6.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the Action recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	D

General considerations

Within MOFPED, the TPD Tax Research Section is in charge of producing tax statistics. Within URA, the Research and Innovation Unit is responsible for collecting and analyzing economic and statistical information (*see* section 2.4.6. for further information on these units and section 2.5.3. for a description of the staff expertise of the Research and Innovation Unit).

Justification for score D

© 2024 IBFD

The country is given score *D,* as the staff has no awareness of the BEPS issue and the OECD/G20 BEPS Action 11 recommendations (as stated for this Performance Indicator, *see* beginning of section 2.5.).

The officers of the Tax Research Section have joined it relatively recently. The Research and Innovation Unit has four officers. Reportedly, they have expertise on working on economic and statistical information due to their career backgrounds, but they have no expertise on measuring and monitoring BEPS nor have they studied OECD/G20 BEPS Action 11 recommendations. They have attended general trainings on BEPS, which did not deal with OECD/G20 BEPS Action 11.

Due to the relevance for Uganda to start measuring and monitoring BEPS (*see* section 2.3.2.5), it seems very relevant to further developing expertise concerning this.

2.5.7. Performance Indicator D.7.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the practical guidance of the PCT toolkit: The Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country – domestic legislation.	**B**

Preliminary considerations

Within MOFPED, the TPD Direct Taxes Section formulates the international tax policy. Within URA, the ITU and Tax Offices deal with international taxation including domestic legislation dealing with offshore indirect transfer of assets.

See section 2.4.1. “Preliminary considerations” for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges, and section 2.5.1. “Preliminary Considerations” for a general description of the staff expertise of these units.

Concerning the expertise for tax treaty aspects of offshore indirect transfers, *see* section 2.5.4.

The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD expertise.

Justification for score B

The country is given score B, as some of the staff have sufficient expertise on the BEPS issue and recommendations, but the expertise is not effectively applied in practice (as stated for this Performance Indicator, *see* beginning of section 2.5.).

© 2024 IBFD

This score relates to the TPD and ITU staff expertise to effectively apply the domestic legislation to address this BEPS issue. Such domestic legislation generally follows measures described in the practical guidance of the PCT toolkit on offshore indirect transfers of assets located in the country. The ITU has applied this legislation and, reportedly, lately achieved important audit outcomes (*see* section 2.3.2.10.).

There are currently ITU officers with sufficient expertise to enforce the domestic legislation. This is the case for the senior staff. The evidence for this is:
- academic (foreign Master's in international taxation) and/or professional studies;
- number of years working on international taxation matters;
- results in terms of audit outcomes; and
- staff self-grading (6 and 8 out of 10, where 1 is the most basic level and 10 the most advanced).

However, the overall level of expertise among both TPD and ITU officers is not sufficient. Furthermore, the expertise may not be effectively applied in practice (as stated for this Performance Indicator). The number of senior members with the required expertise is rather limited in both TPD Direct Taxes Section and ITU (five or fewer officers in total) and their time available to properly work on this matter is quite limited when considering their responsibilities and workload (for example, most of the work of the ITU concentrates on TP audits) (*see* section 2.5.1. for further information on this, which is also applicable for this matter).

This BEPS issue, and domestic and treaty countermeasures have not been specifically addressed in any training except for a webinar imparted by PCT in 2022.

As mentioned in section 2.3.2.10., the ITU faces challenges when applying these rules, such as the detection of cases, EOI, market valuation of assets and obligations, tax collection and possible tax treaty limitations. The ITU needs sufficient time and capacity building to be able to overcome these issues. Therefore, further expertise on these issues seems very relevant.

2.5.8. Performance Indicator D.8.

Performance Indicator and score

Performance Indicator	Score
Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy.	B

Preliminary considerations

Within MOFPED, the TPD Indirect Taxes Section, supported by the other TPD sections, deals with formulating the VAT policy to tackle BEPS due to the digitalization of the economy.

Within URA, the ITU and Tax Offices deal with levying of VAT on international operations including VAT levied on supplies by non-residents.

© 2024 IBFD

See section 2.4.1. “Preliminary considerations” for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges, and section 2.5.1. “Preliminary considerations” for a general description of the staff expertise of these units.

The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD’s expertise.

Justification for score B

The country is given score B, as the staff have sufficient expertise on the base eroding and profit shifting issues and the recommendations, but the expertise is not effectively applied in practice (as stated for this Performance Indicator, *see* beginning of section 2.5.).

This score is given for the TPD and ITU staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures to tackle BEPS due to the digitalization of the economy. Uganda has domestic VAT legislation for B2C and B2B transactions concerning online sale of goods and provision of digital services to businesses in Uganda; however, it still also has an exemption for the import of low-value goods. URA is generally able to collect VAT in the provision of digital services to customers in Uganda, but the collection method for the online sale of goods to customers in Uganda is not yet effective (*see* section 2.3.2.12.).

There are currently TPD and ITU officers with some expertise to formulate the tax policy and administer the domestic VAT legislation. This is the case for the most senior staff. The evidence for this is:

- academic (foreign Master’s in international taxation) and/or professional studies;
- number of years working on international taxation matters, including cross-border transactions subject to VAT;
- their self-grading (two officers gave a grade of 7 and 10 out of 10, where 1 is the most basic level and 10 the most advanced; however, most officers have a grade of 4); and
- Uganda’s specific strategy on the matter, review of tax laws and efforts to enforce existing measures.

However, the overall level of expertise among both TPD and ITU officers is not sufficient. Furthermore, the expertise may not be effectively applied in practice. The number of senior members with the required expertise is rather limited in both the TPD Direct Taxes Section and ITU (five or fewer officers in total). In addition, the time available of all these officers to properly work on this matter is quite limited when considering their responsibilities and workload (for example, most of the work of the ITU concentrates on TP audits) (*see* section 2.5.1. for further information on this, which is also applicable to this matter).

Training on this particular issue has been limited (only one online training provided by the University of Melbourne in 2022). The country still needs to have procedures in place to enforce existing rules and/or amend them. As expressed above, the ITU faces particular challenges when applying these rules, mostly collection issues, which is where more work has been done by the international community. Accordingly, developing further expertise on this matter is advisable.

2.5.9. Performance Indicator D.9.

Performance Indicator and score

© 2024 IBFD

Performance Indicator	Score
Staff expertise to effectively apply unilateral (domestic) measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommended options to tackle base erosion and profit shifting due to the digitalization of the economy.	C

Preliminary considerations

MOFPED's TPD, more specifically the Direct Taxes Section supported by the other TPD sections, formulates the international tax policy, including unilateral (domestic) measures for dealing with the digitalization of the economy. Within URA, the ITU and Tax Offices deal with international taxation.

See section 2.4.1. "Preliminary considerations" for a description of the ITU, TPD and Tax Offices, their main responsibilities and challenges, and section 2.5.1. "Preliminary considerations" for a general description of the staff expertise of these units.

The Assessment Team has not received more specific information about the Tax Offices, therefore the assessment and score in this section is given only for the ITU and TPD's expertise.

Justification for the score given C

The country is given score C, as the staff has awareness, but not sufficient expertise on the base erosion and profit shifting issue and the recommendations (as stated for this Performance Indicator, see beginning of section 2.5.).

This score is given for the TPD and ITU staff's expertise to consider possible effective measures as those described by OECD/G20 BEPS Action 1 Final Report to tackle BEPS due to the digitalization of the economy. The country is indeed aware of the problems arising from the digitalization of the economy and has recently implemented a tax on non-residents providing digital services. However, treaty partners may use tax treaties as an obstacle for Uganda to levy such tax; the TPD and ITU seem to be unclear about this potential outcome. Uganda also needs to carefully start analyzing developments concerning Pillar One in order to take a timely decision on it. TPD is interested in learning how other countries have been solving this problem (*see* section 2.3.2.12.).

There are currently TPD and ITU officers with some expertise to formulate the tax policy and, when necessary, administer domestic legislation. This is the case for the most senior staff. The evidence for this is:

- academic (foreign Master's in international taxation) and/or professional studies;
- number of years working on international taxation matters;
- their self-grading (two officers gave a grade of 7 and 10 out of 10, where 1 is the most basic level and 10 the most advanced; however, most officers have a grade of 4); and
- Uganda's specific strategy on the matter and the recently introduced tax on non-residents providing digital services.

© 2024 IBFD

However, the overall level of expertise among both TPD and ITU officers is not sufficient. Furthermore, the expertise may not be effectively applied in practice (as stated for this Performance Indicator). The number of senior members with the required expertise is rather limited in both the TPD Direct Taxes Section and ITU (two officers or fewer in total). In addition, the time available for these officers to properly work on this matter is quite limited when considering their responsibilities and workload (for example, most of the work of the ITU concentrates on TP audits) (*see* section 2.5.1. for further information on this, which is also applicable to this matter).

Training on this issue has been more limited and at beginners or intermediate level (two online trainings provided by IBFD and online meeting(s) organized by the ATAF).

The country still needs to make an overall assessment of the tax system to deal with the digitalization of the economy, which is stated in its strategy plans (*see* sections 2.2.1., 2.2.5. and 2.2.6.). Such assessment should consider the work of the IF on Pillar One, but also alternative measures and their potential application when there are tax treaties in force. Accordingly, developing further expertise on this matter seems very relevant.

© 2024 IBFD

2.6. Key Area of Assessment E.: IT framework

Description of Performance Indicators of Key Area of Assessment E

Key Area of Assessment E evaluates whether the tax authorities have sufficient and operational IT infrastructure to effectively implement selected OECD/G20 BEPS Actions by assessing whether: *(i) there are sufficient IT infrastructure and IT staff to effectively implement the selected OECD/G20 BEPS Action; and* *(ii) such IT infrastructure and IT staff are operational (i.e. in use or ready to be used, or respectively at work or ready to do the work).* *For this purpose, IT infrastructure encompasses hardware and software.* *The selected OECD/G20 BEPS Actions are those BEPS Minimum Standards or Action recommendations that require specific IT capability to be in place for their implementation, i.e. Action 5, on EOI on tax rulings; Action 11, on measuring and monitoring BEPS; and Action 13, on CbC reporting.* *Scores A to D assess the level of implementation of IT infrastructure in case the country has a position to adopt the recommendations (OECD/G20 BEPS Actions 5 and 13 Minimum Standards, and Action 11 recommendations).* *Score Other applies in cases where the country has a position not to adopt the recommendations (and therefore no IT infrastructure needs to be implemented and, consequently, no assessment of implementation is necessary). However, in the case of the BEPS Minimum Standards, once a country has joined the IF, it has taken a position to implement the BEPS Minimum Standards and therefore may only be graded under the A-D scale.* *It should be noted that a B.A.T. assessment cannot in any way replace or be considered as part of the peer review process of the BEPS Minimum Standards, which is the official assessment for members of the OECD/G20 Inclusive Framework on BEPS.*

2.6.1. Performance Indicator E.1.

Description of Performance Indicator

Performance Indicator E.1. evaluates concerning the Minimum Standard on Exchange of Information on Tax Rulings, whether the country's tax authorities have sufficient IT infrastructure and IT staff available to work with the OECD XML Schema and thus make the exchange of information possible.

Performance Indicator and score

Performance Indicator	Score
Sufficient and operational IT infrastructure and IT staff to effectively comply with the Minimum Standard on Exchange of Information on Tax Rulings (OECD/G20 BEPS Action 5).	**Other**

Justification for the score given Other

The country is given the score *Other*, as the country does not yet have a position on adopting the EOI of tax rulings since it has not (yet) analyzed OECD/G20 BEPS Action 5 recommendations.

The DRMS 2019/20-2023/24 has as one of its aims the strengthening of EOI; however, it only refers to the exchange of financial accounting information and country-by-country reporting, which are stated as priority,

© 2024 IBFD

while the EOI of tax rulings is not explicitly recognized. The Uganda tax authorities have not yet fully analyzed the OECD/G20 BEPS Action 5 Minimum Standard, its ToR for Peer Review and the potential benefits from carrying on automatic EOI on tax rulings. Accordingly, there is no position on implementing it and consequently no evaluation is possible at this stage on whether the country tax authorities have sufficient IT infrastructure and IT staff for this.

For further information, *see* sections 2.2.1., 2.2.2. and 2.3.1.2.

2.6.2. Performance Indicator E.2.

Description of Performance Indicator

Performance Indicator E.2. evaluates concerning measuring and monitoring BEPS, whether the country tax authorities have sufficient IT infrastructure and IT staff available to:
- *produce and regularly publish corporate tax statistics;*
- *produce (periodic) reports on the estimated revenue impact of base erosion and profit shifting;*
- *produce reports on the estimated revenue impact of proposed and enacted BEPS countermeasures; and*
- *produce statistics on the exchange of information of tax rulings and CbC reporting.*

Performance Indicator and score

Performance Indicator	Score
Sufficient and operational IT infrastructure and IT staff to effectively implement OECD/G20 BEPS Action 11 on Measuring and Monitoring BEPS.	**Other**

Justification for the score given Other

The country is given the score *Other*, as the country does not yet have a position on measuring and monitoring BEPS since it has not (yet) analyzed OECD/G20 BEPS Action 11 recommendations.

The Uganda tax authorities have not yet analyzed and evaluated the implementation of OECD/G20BEPS Action 11 recommendations. URA does not currently produce statistics on BEPS and it has not instructed the relevant unit(s) to do this. It is not currently possible for URA to collect information on BEPS based on the information provided by taxpayers under the current tax returns, which is extracted by the IT system. As there is no position to start collecting information to measure and monitor BEPS and/or adopt OECD/G20 BEPS Action 11 recommendations, no evaluation is possible at this stage on whether the country's tax authorities have sufficient IT infrastructure and IT staff available for this.

For further information, *see* sections 2.2.1., 2.2.2. and 2.3.2.5.

© 2024 IBFD

2.6.3. Performance Indicator E.3.

Description of Performance Indicator

Performance Indicator E.3. evaluates concerning the Minimum Standard on CbC reporting, whether the country tax authorities have sufficient IT infrastructure and IT staff available to:
- *adhere to standards that ensure the protection of confidential taxpayer data;*
- *work with the OECD XML Schema; and*
- *ensure that an appropriate encryption method and method for electronic data transmission are in place.*

Performance Indicator and score

Performance Indicator	Score
Sufficient and operational IT infrastructure and IT staff to effectively comply with the Minimum Standard on Country-by-Country (CbC) Reporting (OECD/G20 BEPS Action 13).	**D**

Justification for the score given D

The country is given score D, as there is no plan (yet) to have sufficient IT infrastructure and IT staff.

As stated by the DRMS 2019/20-2023/24, Uganda explicitly aims to strengthen EOI by implementing, inter alia, CbC reporting. However, there is no plan yet in place to implement it. Indeed, the Uganda tax authorities have not (yet) analyzed OECD/G20 BEPS Action 13 recommendations. Accordingly, there is neither a plan nor an evaluation of whether the country's tax authorities have sufficient IT infrastructure and IT staff available to:
- adhere to standards that ensure the protection of confidential taxpayer data;
- work with the OECD XML Schema; and
- ensure that an appropriate encryption method and method for electronic data transmission are in place.

For further information, *see* sections 2.2.1., 2.2.2. and 2.3.1.4.

© 2024 IBFD

2.7. Summary of assessment scores

The following table provides a summary of the assessment scores presented in sections 2.1. to 2.6.

Table 1. Summary of Assessment Scores

Scores per Performance Indicator	Score
Key Area of Assessment A: Country strategy	
A.1. Clearly structured strategy and priority setting regarding international tax avoidance, stated in a strategy document(s) and communicated to all tax authorities and other relevant stakeholders.	A
A.2. Clearly structured strategy and priority setting stated in a strategy document and communicated to all tax authorities and other relevant stakeholders regarding (i) the OECD/G20 BEPS Minimum Standards and their implementation; and (ii) OECD/G20 BEPS recommendations other than Minimum Standards and their implementation.	B
A.3. Strategic position regarding to either join or not join the OECD/G20 Inclusive Framework on BEPS (IF) communicated to all tax authorities and other relevant stakeholders.	C
A.4. Clearly structured strategy and priority setting regarding base erosion and profit shifting issues, other than OECD/G20 BEPS initiative, stated in current and/or past strategy document(s) and is communicated to all tax authorities and other relevant stakeholders.	B
A.5. Clearly structured strategy and priority setting regarding tax issues raised by the digitalization of the economy stated in a strategy document and sufficiently communicated to all tax authorities and other relevant stakeholders.	A
A.6. Strategic position to either join or not join the IF Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy (the Statement) of 8 October 2021.	Other
Key Area of Assessment B: Legislative and regulatory framework	

© 2024 IBFD

Key Area of Assessment B.1.: OECD/G20 BEPS Minimum Standards	
B.1.1. Compliance with the BEPS Minimum Standard on preferential tax regimes (OECD/G20 BEPS Action 5).	**A**
B.1.2. Compliance with the BEPS Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5).	**A, D**
B.1.3. Compliance with the BEPS Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6).	**C**
B.1.4. Compliance with the BEPS Minimum Standard on CbC reporting (OECD/G20 BEPS Action 13).	**A, C**
B.1.5. Compliance with the BEPS Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14).	**C, D**
Key Area of Assessment B.2.: Measures, other than the OECD/G20 BEPS Minimum Standards	
B.2.1. Adoption of recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4).	**A, B, Other**
B.2.2. Adoption of recommendations for preventing the granting of treaty benefits in inappropriate circumstances (OECD/G20 BEPS Action 6).	**C**
B.2.3. Adoption of recommendations for preventing the artificial avoidance of PE status (OECD/G20 BEPS Action 7).	**C**
B.2.4. Adoption of recommendations to align transfer pricing outcomes with value creation (intangibles; risks and capital; and global value chains and other high-risk transactions) (OECD/G20 BEPS Actions 8-10).	**A**
B.2.5. Adoption of recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	**D**
B.2.6. Adoption of recommendations on transfer pricing documentation, other than CbC reporting (OECD/G20 BEPS Action 13).	**B**

© 2024 IBFD

B.2.7. Signing the MLI	**D**
B.2.8. Adoption of the recommendations of the 2015 report to the G-20 Development Working Group to tackle base erosion and profit shifting impact of tax incentives for investment (PCT toolkit).	**C-C-C-D, A-C-C-A, B, C**
B.2.9. Adoption of the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses.	**Other**
B.2.10. Adoption of the practical guidance of the PCT toolkit: Taxation of Offshore Indirect Transfers (as also elaborated in Article 13 the 2021 UN Model Convention).	**A, C**
B.2.11. Adoption of the 2017 UN Tax Handbook recommendations to tackle base erosion and profit shifting due to outbound payments in general and, specifically, service charges and management and technical fees.	**A, B**
B.2.12. Adoption of recommendations of the OECD/G20 BEPS Action 1 Final Report relating to VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**A, B, D**
B.2.13. Adoption of the recommended options included in the 2017 UN Tax Handbook on Protecting the Tax Base relating to unilateral tax measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**A**
B.2.14. Adoption of any tax treaty measure allowing source taxation of non-resident digital services despite the absence of PE or fixed base, including particularly article 12B of the 2021 UN Model Convention.	**C**
Key Area of Assessment C: **Organizational framework**	
C.1. An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Action recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4). An operational unit of the tax authorities instructed to apply measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations for dealing with base-eroding payments in general and, specifically, outbound payment of service charges, and management and technical fees.	**A/B, B** **A/B, B**

© 2024 IBFD

C.2. An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of exchange of tax rulings (OECD/G20 BEPS Action 5).	**Other**
C.3. An operational unit of the tax authorities instructed to apply recommendations resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of preferential tax regimes (OECD/G20 BEPS Action 5). An operational unit of the tax authorities instructed to apply measures resulting from the recommendations of the PCT toolkit: Options for Low Income countries' Effective and Efficient Use of Tax Incentives for Investment.	**Other** **Other**
C.4. An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Minimum Standard and also from other Action recommendations for preventing tax treaty abuse (OECD/G20 BEPS Action 6). An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Action recommendations for preventing the artificial avoidance of permanent establishment status (OECD/G20 BEPS Action 7). An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Minimum Standards for making dispute resolution mechanisms more effective (OECD/G20 BEPS Action 14). An operational unit of the tax authorities instructed to deal with the Multilateral Convention to implement tax treaty-related measures to prevent BEPS (MLI) (OECD/G20 BEPS Action 15). An operational unit of the tax authorities instructed to apply tax treaty measures to tax capital gains resulting from direct or indirect alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the indirect alienation of shares of a domestic company. An operational unit of the tax authorities instructed to apply tax treaty measures allowing source taxation of service fee payments, such as management, consulting or technical service fee payments, made to non-resident enterprises, as well as of payments of rents and royalties. An operational unit of the tax authorities instructed to apply tax treaty measures allowing source taxation of digital services provided by non-residents despite the absence of PE or fixed base.	**A/B, B** **A/B, B** **A/B, B** **Other** **A/B, B** **A/B, B** **A/B, B**
C.5. An operational unit of the tax authorities instructed to apply measures resulting from the Action recommendations for aligning transfer pricing outcomes with value creation	**A/B, B**

© 2024 IBFD

(OECD/G20 BEPS Actions 8-10) and transfer pricing documentation – Master File and Local File (OECD/G20 BEPS Action 13). An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Minimum Standard on Country-by-Country Reporting (OECD/G20 BEPS Action 13). An operational unit of the tax authorities instructed to apply measures resulting from the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses.	 **B** **Other**
C.6. An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Action recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	**B**
C.7. An operational unit of the tax authorities instructed to apply measures resulting from the practical guidance of the PCT toolkit: The Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country – domestic law aspects.	**A/B, B**
C.8. An operational unit of the tax authorities instructed to apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**A/B, B**
C.9. An operational unit of the tax authorities instructed to apply unilateral tax measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations to tackle base erosion and profit shifting due to the digitalization of the economy - unilateral tax measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**A/B, B**
Key Area of Assessment D: **Expertise framework.**	
D.1. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for limiting base erosion involving interest deductions and other financial payments (OECD/G20 BEPS Action 4). Staff expertise to effectively apply measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommendations to deal with base-eroding	**A** **A**

© 2024 IBFD

payments in general and, specifically, payment of service charges, management and technical fees.	
D.2. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of exchange of tax rulings (OECD/G20 BEPS Action 5).	**Other**
D.3. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard for countering harmful tax practices more effectively, specifically in respect of preferential tax regimes (OECD/G20 BEPS Action 5). Staff expertise to effectively apply measures resulting from the recommendations of the PCT toolkit: Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment.	**Other** **Other**
D.4. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard and other Action recommendations for preventing tax treaty abuse (OECD/G20 BEPS Action 6). Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for preventing the artificial avoidance of permanent establishment status (OECD/G20 BEPS Action 7). Staff expertise to effectively apply the BEPS Minimum Standard for making dispute resolution mechanisms more effective (OECD/G20 BEPS Action 14). Staff expertise to effectively deal with the Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting (OECD/G20 BEPS Action 15). Staff expertise to effectively apply tax treaty measures to tax capital gains resulting from direct or indirect alienation of entities holding, directly or indirectly, immovable property situated in the country and/or from the indirect alienation of shares of a domestic company. Staff expertise to effectively apply tax treaty measures allowing source taxation of service fee payments, such as management, consulting or technical service fee payments, made to non-resident enterprises, as well as of payments of rents and royalties source taxation of digital services provided by non-residents despite the absence of PE or fixed base. Staff expertise to effectively apply tax treaty measures allowing source taxation of non-resident digital services despite the absence of PE or fixed base.	**B** **B** **C** **Other** **B** **B** **C**

© 2024 IBFD

D.5. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for aligning transfer pricing outcomes with value creation (OECD/G20 BEPS Actions 8-10). Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Minimum Standard and other Action recommendations for transfer pricing documentation including Country-by-Country Reporting (OECD/G20 BEPS Action 13). Staff expertise to effectively apply measures resulting from the recommendations of the PCT toolkit: Addressing Difficulties in Accessing Comparability Data for Transfer Pricing Analyses.	**B** **C** **Other**
D.6. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11).	**D**
D.7. Staff expertise to effectively apply measures resulting from the practical guidance of the PCT toolkit: The Taxation of Offshore Indirect Transfers to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country.	**B**
D.8. Staff expertise to effectively apply measures resulting from the OECD/G20 BEPS Action 1 recommendations concerning VAT measures to tackle base erosion and profit shifting due to the digitalization of the economy.	**B**
D.9. Staff expertise to effectively apply unilateral (domestic) measures resulting from the 2017 UN Tax Handbook on Protecting the Tax Base recommended options to tackle base erosion and profit shifting due to the digitalization of the economy.	**C**
Key Area of Assessment E: **IT framework**	
E.1. Sufficient and operational IT infrastructure and IT staff to effectively comply with the Minimum Standard on Exchange of Information on Tax Rulings (OECD/G20 BEPS Action 5).	**Other**
E.2. Sufficient and operational IT infrastructure and IT staff to effectively implement OECD/G20 BEPS Action 11 on Measuring and Monitoring BEPS.	**Other**
E.3. Sufficient and operational IT infrastructure and IT staff to effectively comply with the Minimum Standard on Country-by-Country (CbC) Reporting (OECD/G20 BEPS Action 13).	**D**

© 2024 IBFD

3. Conclusions and Recommendations on Possible Measures Concerning BEPS Issues for Consideration by the Tax Authorities

This section provides conclusions based on the assessment presented in section 2. and suggests some possible measures to deal with BEPS issues considering also ongoing measures adopted by the Uganda tax authorities, actions to be undertaken to start implementing such measures or further implement ongoing measures, and possible assistance for capacity building to address eventual needs. It is suggested that the Uganda tax authorities consider these possible measures while taking into account, where possible, an estimation of the cost for their implementation (e.g. legislative and administrative costs) and their expected benefit (especially the expected additional revenue).

In this section, we first consider in general how the country's strategy on (international) tax avoidance is structured and communicated (section 3.1.). Second, we discuss the current situation of Uganda with regard to the BEPS Minimum Standards, as these are international tax practices considered relevant for all countries. As Uganda has not joined the IF, the country is free from any commitment to implement these standards. Therefore we consider these standards from the perspective of their relevance for Uganda (section 3.2.). Third, we consider recommendations, other than the BEPS Minimum Standards, for dealing with selected OECD/G20 BEPS issues and other BEPS issues (section 3.3.). Fourth, we discuss some capacity-building issues separately (section 3.4.). Finally, the table in section 3.5. provides an overview of the possible measures suggested in this section, along with possible actions, needs and assistance.

It is for each country to decide based on its tax policy on adopting other recommendations or best practices in respect of both OECD/G20 BEPS issues and other BEPS issues identified by the international community as relevant for developing countries (*see* section 3.3.). We consider that the adoption (or non-adoption) of a specific recommendation should be based on an in-depth assessment of the specific BEPS issue in the country and the suitability of the specific recommendations proposed for dealing with it.

In the case that a country makes an informed decision to partially adopt the OECD/G20 BEPS recommendations, or not to adopt these recommendations or to adopt alternative measures to deal with the relevant BEPS issues, it is suggested that the tax authorities monitor both the BEPS issue and the effectiveness of any other measures already adopted and, in due time, decide whether they are sufficient to address the problem or whether the relevant OECD/G20 BEPS recommendations or other measures should be considered.

© 2024 IBFD

3.1. Overall country strategy on (international) tax avoidance

Country strategy plans

The overall country strategy as regards international tax avoidance is explicitly stated in the country strategy documents, sufficiently communicated to all relevant stakeholders but not clearly structured (*see* section 2.2.).

The main country strategy documents (NPD and DRMS) regard international tax avoidance as a concern for the country and an obstacle for revenue mobilization. The country strategy plans stated in these documents clearly identify main issues of concern, which go beyond the OECD/G20 BEPS Action Plan, proposed countermeasures, and a timeline to implement such solutions. These plans cover a five-year period. However, there are no country policy documents publicly available monitoring the periodic progress made within the five-year period as is done, for example, at institutional level by URA, which monitors and publishes the tax administration progress made on a yearly basis (URA Corporate Plans).

It is therefore recommended that tax authorities, i.e. MOFPED-TPD, also adopt measures to periodically evaluate (for example, on a yearly basis) the progress made in implementing the strategy plans, including the progress in tackling identified issues and the effectiveness of the implemented countermeasures. Such evaluations could be included in the future strategy plan(s).

Regarding tax policy making, the strategy plans (DRMS) have stated the need to establish a formalized and properly documented procedure for developing the tax policy and corresponding measures. The Assessment Team has not been able to identify any tangible progress in this matter.

It is suggested that the tax authorities implement their strategy plans by establishing formalized procedures for developing the country's tax policy. Such procedures should include a well-structured consultation process to receive input from all relevant stakeholders, including URA, other relevant government departments and also from the business and tax advisory sectors and other civil society representatives.

Country strategy concerning BEPS (OECD/G20 Action points and other BEPS issues)

As a preliminary consideration, the country currently does not measure the impact on domestic revenue of BEPS issues and/or the anti-BEPS measures adopted in the domestic legislation (*see* section 2.3.2.5.). The country could benefit from obtaining and analyzing such data, to better identify the most pressing issues and prioritize them in the future strategy plans (for detailed recommendations, *see* section 3.3.4.)

The country's strategy plans generally state that priority should be given to the following BEPS issues: tax treaty abuse, challenges relating to taxation at source of non-residents, wasteful tax incentives, digital economy, TP malpractices and lack of comparability data and EOI including CbC reporting.

Given the fact that so far Uganda has not decided to become a member of the IF (which would entail a priority and obligation to implement the Minimum Standards) and given the lack of data to determine the extent and budgetary relevance of the various base erosion and profit shifting issues and measures to remedy them, we suggest that priority should be given to the effective implementation of measures already initiated, which could therefore provide positive budgetary results in the short and medium term. Subsequent work should be focusing on new measures that may be very relevant to protect the domestic tax base and to achieve broader domestic resource mobilization.

© 2024 IBFD

BEPS issues already identified by Uganda and with regard to which countermeasures have already been initiated:

- countering indirect transfer of assets located in the country: Effectively apply existing domestic rule by overcoming specific issues already detected (*see* section 3.3.7.);
- countering abuse of base-eroding payments: Continue applying effectively existing provisions on withholding taxes on outbound payments (taking into account any tax treaty obligations) and limitation on interest deductibility (EBITDA-based rule) (*see* sections 3.3.1. and 3.3.8.);
- countering abuse of transfer pricing: Analyze whether all the necessary elements of OECD/G20 BEPS Actions 8-10 have been sufficiently evaluated and are effectively implemented by URA, as provided by the domestic legislation. Carefully evaluate the recommendations of the PCT toolkit to address the difficulties related to the lack of comparables data in transfer pricing analyzes (*see* section 3.3.3.);
- protecting the domestic tax base against its progressive erosion by the digitalization of the economy: Effectively implement and evaluate the effectiveness of measures already taken, i.e. value added tax (VAT) measures, by overcoming specific issues already detected. Evaluate and formulate an approach to address the challenges deriving from the digitalization of the economy, both in the field of VAT and direct taxation, to be supported by a specific tax treaty policy (*see* section 3.3.9.); and
- countering abuse of tax treaties: Continue renegotiating tax treaties in force and implement strategy plans by refraining from entering into negotiations for new tax treaties until a cost-benefit analysis is carried out. Align Uganda treaty policy with the EAC treaty policy in respect of treaty abuse (*see* sections 3.2.2.2. and 3.3.2.).

Other relevant BEPS issues considered relevant for Uganda:

- countering harmful tax competition: Initiate discussions about regional harmful tax competition with neighboring countries in the EAC context (*see* section 3.2.2.1.);
- reviewing existing tax incentives based on the recommendations of the PCT toolkit on the effective and efficient use of investment incentives. Evaluate tax incentives while taking into account the emerging implementation of the global minimum tax (Pillar Two) (*see* section 3.3.6.);
- implementing CbC Reporting: If its country strategy is implemented by adopting the model legislative, administrative and technological requirements, tax authorities might benefit from receiving CbC information from other countries in the context of transfer pricing (*see* section 3.2.2.3.); and
- implementing EOI on tax rulings: In case Uganda decides to implement EOI on tax rulings, based on a cost-benefit analysis, it might benefit from receiving relevant tax rulings from the tax authorities of other countries (*see* section 3.2.2.1.).

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Country Strategy on International Tax Avoidance (Strategy Documents): **(i)** Tax authorities to periodically evaluate the progress made in implementing strategy documents, including the progress in tackling identified issues and the effectiveness of the implemented	**(a)** TPD to adopt procedures to monitor progress made in implementing the strategy documents, including the URA feedback in tackling identified issues and the effectiveness of measures. TPD to include such progress evaluations in following strategy documents.	N/A

© 2024 IBFD

measures, and to make these reports publicly available. **(ii)** Tax authorities to implement their strategy documents by establishing formalized procedures for developing the country's more specific tax policy.	**(b)** TPD to implement DRSM by establishing formalized procedures for developing the country's more specific tax policy considering a well-structured consultation process for input from all relevant stakeholders. **(c)** TPD to evaluate whether capacity building is necessary to carry out (a) and (b).	

3.2. International commitments (BEPS Minimum Standards)

3.2.1. The decision to join or not join the IF[58]

A fundamental tax policy decision for developing countries is whether to join the IF, therefore committing to adopt the BEPS Minimum Standards within a specific time frame. The BEPS package can be considered a major international development in combating base erosion and profit shifting. A worldwide endorsement of the Project is important for its success, and thus participating in the IF is in principle recommended. On the one hand, joining the IF results in specific rights and positive externalities. Members contribute to identify BEPS-related issues. The country may benefit from technical assistance from the partners in the IF. In addition, participating in the IF work may increase the level of knowledge and awareness of that country's tax authorities with regard to BEPS. On the other hand, IF members assume specific commitments, namely (i) paying annual fees; (ii) implementing the BEPS Minimum Standards; and (iii) accepting and implementing the tax policy established by the IF in the future. In this context, it should be considered that some Minimum Standards may not necessarily reflect the priorities of some (developing) countries. IF members need to have an adequate level of knowledge and experience to properly provide input at IF meetings. Additionally, IF members need to allocate personnel resources for participating in the IF work (e.g. meetings on various subjects), which may imply hiring new or stretching current staff resources. It is therefore necessary for each country to carefully consider membership of the IF.

Whether Uganda should join the IF or not must be a decision of the tax authorities, i.e. MOFPED and URA, following a careful evaluation of the issues briefly described above. Indeed, besides political considerations, such evaluation is essential to inform the best choice for the country.

Uganda may implement some BEPS Minimum Standards, which are internationally recognized best practices, without becoming an IF member. However, to benefit from receiving information i.e. CbC reporting and tax rulings (*see* below), becoming an IF Member seems necessary. The fact that Uganda is not a member of the IF makes it difficult in practice to implement these standards and be able to receive information. Indeed, the Assessment Team is not aware of an explicit requirement of IF membership for implementing these standards. However, countries are scrutinized through a well-structure peer review process before they can start receiving CbC reports or tax rulings and the peer review is carried out by IF members for IF members. In theory, Uganda could agree bilaterally with relevant countries to exchange CbC reports and tax rulings; however, this is in practice difficult as each of these countries would need to individually assess that Uganda meets all requirements.

[58] GIZ (2018), supra n. 8, at pp. 7-8.

© 2024 IBFD

If Uganda were to choose to join the IF, it would assume the commitment of implementing all the Minimum Standards as a priority, the compliance of which would be peer reviewed by the IF, but in case of compliance the benefit of receiving CbC reports and tax rulings would also be possible via a regulated peer-review system for all members.

In relation to such a decision, the following subsections analyze the compliance of the Uganda's tax system with these standards, and possible measures that would ensure compliance. However, the B.A.T. cannot by any means replace, or be considered as part of, the official IF peer review process of the BEPS Minimum Standards.

3.2.2. Implementation of the BEPS Minimum Standards

3.2.2.1. BEPS Minimum Standard on harmful tax practices (OECD/G20 BEPS Action 5)

Strategy

The country strategy documents express concerns as regards harmful tax competition. The DRMS, in particular, acknowledges that the pressure to match foreign regimes incentivizing off-shoring of Uganda-source income may lead policy makers to implement preferential regimes eroding the domestic tax base (*see* section 2.3.1.1.).

Concerning EOI of tax rulings, the DRMS has as one of its aims the enhancement of EOI; however, the EOI of tax rulings is not explicitly recognized (*see* section 2.2.1.).

It is suggested that the Uganda tax authorities:
- fully analyze the OECD/G20 BEPS Action 5 Minimum Standard, in particular, the issue of harmful preferential tax regimes and whether it is indeed appropriate to deal with it at international (regional) level (*see below* adoption of measures);
- fully analyze the pros and cons of the OECD/G20 BEPS Action 5 Minimum Standard, in particular, the requirements for EOI of tax rulings and its potential benefits for the country;
- state in the DRMS their strategy concerning the above; and
- monitor and evaluate the implementation of such strategy.

Adoption of measures

Preferential tax regimes

The country seems to be compliant with the BEPS Minimum Standard for preferential tax regimes, as it does not have any regimes with harmful characteristics as identified by OECD/G20 BEPS Action 5 (*see* section 2.3.1.1.). Uganda has not been reviewed by the FHTP to confirm its compliance.

Should the country wish to join the IF in the future, it is suggested that the tax authorities:
- analyze the ToR for Peer Review for this Minimum Standard, particularly, what features make a preferential regime harmful; and then
- identify, review and, if necessary, amend or terminate preferential tax regimes that have harmful features.

© 2024 IBFD

Besides, the tax authorities are concerned about regional tax competition exacerbated by financial centre regimes recently introduced by neighbouring countries (e.g. Kenya and Rwanda), which may force Uganda to consider establishing similar preferential tax regimes to counter this.

In this respect, it is suggested to initiate discussions about harmful tax competition with neighbouring countries. The EAC seems an ideal forum to hold such discussions with the aim to have a common understanding among member countries about this problem and then ideally a common tax policy.

Should Uganda choose the path of introducing a financial centre regime, it is suggested that it carefully considers its design while also realizing that treaty partners may respond to the introduction of such a regime, in particular:

- design principles suggested by the PCT Toolkit (Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment);
- substantial activity requirements (*see* OECD/G20 BEPS Action 5, Ch. IV, section III); and
- should the effective tax rate offered by the regime be less than 15%, the potential impact of Pillar Two that is being implemented by other jurisdictions.

Exchange of Tax Rulings

The country seems to be compliant with some requirements of the BEPS Minimum Standard for EOI of tax rulings (rulings internationally considered relevant) (*see* section 2.3.1.1.):

- necessary legal framework for spontaneous EOI; and
- confidentiality.

However, the BEPS Minimum Standard requirements have not been fully analyzed by the tax authorities, including in particular those relating to:

- identifying, preparing and exchanging information on tax rulings; and
- keeping statistics on EOI under the transparency framework.

It is suggested that Uganda evaluates whether EOI on tax rulings is relevant and beneficial to the country, especially in respect of receiving information from other countries on rulings that are relevant to the country, and then follow up its implementation if so decided. For this, Uganda would need to first implement the elements that are lacking for complying with the Minimum Standard, i.e. URA would need to identify, prepare and make it possible to exchange information on tax rulings; and would also need to make operational to keep statistics on EOI in respect of tax rulings by specifically instructing the EOI Unit.

It should be noted, however, that the fact that Uganda is not a member of the IF may make it difficult in practice to agree with relevant countries to exchange rulings. This is due to the absence, in this case, of a structured peer review process to check whether all requirements, including confidentiality, are met.

It is also suggested that Uganda decides on whether to make tax rulings public to ensure transparency, discussing and analyzing potential benefits, and then follow up its implementation if so decided.

As Uganda has not analyzed and yet decided to implement the exchange of tax rulings, we do not assess whether URA’s organization and staff expertise is sufficient to deal with this. Nevertheless, we suggest carefully evaluating this and, particularly, whether URA’s IT technical structure and staffing would be able and capable to deal with such exchanges of tax rulings (i.e. assemble and send information, but also receive

© 2024 IBFD

and put forward information to relevant tax officers), thus, to avoid that IT could become an obstacle once such participation in these information exchanges has been decided.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Harmful Tax Practices and Exchange of Rulings (OECD/G20 BEPS Action 5): **(i)** Uganda tax authorities - to fully analyze the OECD/G20 BEPS Action 5 Minimum Standard, both harmful preferential tax regimes and EOI of tax rulings; - to state in the DRMS their strategy concerning these; and - to monitor and evaluate such strategy. **(ii)** Measures on preferential tax regimes: - if Uganda wishes to join the IF, to fully analyze whether Uganda preferential tax regimes have harmful features; - to initiate discussions about harmful tax competition with neighbouring countries in a EAC context; and - to carefully consider design of potential financial centres and other regimes based on OECD/G20 BEPS Minimum Standard and international best practices taking into account the possible effect of other countries implementing the Pillar Two global minimum tax. **(iii)** Measures on EOI of tax rulings: - evaluate whether to adopt EOI on tax rulings, particularly, whether this is in practice possible if Uganda is not an IF member; - follow-up with an implementation plan if so decided; and - decide whether to make tax rulings public to ensure transparency and follow-up its implementation if so decided.	**(a)** If Uganda considers joining the IF: TPD to analyze the OECD/G20 BEPS Action 5 ToR for Peer Review concerning harmful tax rulings and then to review existing preferential tax regimes. **(b)** TPD to take initiate to propose EAC meetings to discuss harmful tax competition among EAC members to the aim to have a common understanding and a common policy. **(c)** If Uganda considers implementing new preferential tax regimes: TPD to analyze substantial activity requirement under OECD/G20 BEPS Action 5 and the recommendations of the PCT toolkit. **(d)** TPD and URA to discuss and analyze the benefits and suitability of EOI on tax rulings to the country, especially in respect of receiving information from other countries. Once a decision is made, follow up its implementation if it is the case. **(e)** In case the country decides on EOI of tax rulings, make a full evaluation of all requirements and start implementing those necessary elements: - URA to identify, prepare, and make possible to exchange information on tax rulings; and - to make operational to keep statistics on EOI in respect of tax rulings by specifically instructing the EOI Unit. **(f)** Discuss and analyze the benefits of making tax rulings public. Once a decision is made, follow up its implementation if it is the case.	**(1)** Specific workshop for TPD about harmful tax competition, particularly harmful features, in order to enabling a review of Uganda preferential tax regimes (when necessary). **(2)** EAC meeting with key tax policy makers of member countries to discuss harmful (regional) tax competition with the aim to have a common understanding about this problem and then ideally a common tax policy. **(3)** Specific training for ITU and EOI unit on EOI on tax rulings, its possible benefits for the country and the OECD/G20 BEPS Action 5 requirements for such exchange.

© 2024 IBFD

3.2.2.2. BEPS Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6)

Strategy

The DRMS 2019/20 - 2023/24 states that the country's official position is not to negotiate new tax treaties until stock is taken of tax treaties in force, determining their costs and benefits. If a new treaty is needed, it should be negotiated in line with the country's tax treaty policy and in view of international best practices in order to minimize opportunities for abuse. The DRMS also refers to the OECD/G20 BEPS Actions recommendations to address Uganda's international tax concerns (*see* sections 2.2.1. and 2.3.1.3.).

It is suggested that Uganda:

- proceeds with a cost-benefit analysis of tax treaties, in general, and tax treaties in force, in particular;
- states its tax treaty policy. For this the tax authorities may:
    - update the Uganda Model Tax Convention in light of the EAC Model Convention and the proposed DRM4D (amended) Uganda Model Convention and have it approved by the Cabinet and available to all relevant stakeholders (e.g. URA/ITU, Foreign Affairs and Ministry of Justice); and
    - identify countries with which Uganda should prioritize treaty renegotiations in view of investment flows and treaty abuse risks.

While the above is being done, it is suggested that Uganda actually enforces its tax treaty policy as provided by the DRMS and refrains from entering into new tax treaties unless it is necessary. Specific assistance would be helpful for Uganda to review its Uganda tax treaty network.

Adoption of measures

Uganda already underlined in its DRMS that existing tax treaties need to incorporate international best practices. The DRM4D (amended) Uganda Model Convention has been updated in view of recent developments in international tax and incorporates some provisions of the OECD/G20 BEPS Minimum Standard, such as the new preamble and a simplified LOB rule, but it strikingly does not adopt the PPT rule, which has become an international standard not only as a result of the MLI but also bilateral negotiations. The country also follows the 2022 EAC Model Convention as its country's tax treaty model for negotiations with non-ECA countries. The EAC Model Convention complies with the OECD/G20 BEPS Minimum Standard as it contains the new preamble and the PPT rule.

It is suggested that Uganda aligns its treaty policy by reviewing its country's Model Convention in light of the EAC Model. Indeed, it is not clear what was the reasoning for choosing only a simplified LOB in its Model and only the PPT in the EAC Model. Further specific assistance could be helpful for Uganda to review its Model Convention (*see* sections 2.3.2.2. and 2.3.2.3.).

Uganda has a position to incorporate these anti-abuse provisions in its existing and new tax treaties through bilateral (re)negotiations. However, as it stands, these Standards are not adopted in any of Uganda's tax treaties in force (*see* section 2.3.1.3).

It is suggested that Uganda continues its endeavour to (re)negotiate its tax treaties to adopt the OECD/G20 BEPS Action 6 Minimum Standard in all its tax treaties, as underlined in the DRMS. In due time, Uganda may ensure the effective application and implementation of anti-abuse treaty provisions.

© 2024 IBFD

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy, including tax treaty policy. Within URA, the ITU and Tax Offices deal with international taxation, including all tax treaty-related matters. Regarding tax treaty negotiation, both the TPD and ITU participate in the negotiations, but TPD takes a leading role. Comments below relate only to the TPD and ITU.

The TPD and ITU are not currently fully operational as they have capacity issues mostly relating to the number and experience of staff. The TPD Direct Taxes Section does not seem to have enough officers to properly carry on all assigned responsibilities in the ever increasing international complexities. More than a third of ITU staff are new URA recruits who still need further training and gaining of experience. It is suggested to provide fundamental training for junior officers and more advanced training for more senior officers.

See sections 2.4.4. and 2.5.4. for further information.

Concerning, particularly, tax treaties and OECD/G20 BEPS Action 6 Minimum Standard, the TPD and ITU's most senior staff have sufficient expertise on various international tax matters including BEPS issues and the BEPS Minimum Standard. However, the level of expertise among other officers is not yet sufficient and there is a rather substantial gap between most senior members and other members of both the TPD and ITU.

See section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

Meanwhile, it is suggested that the tax authorities provide training to junior staff of the TPD and ITU on the fundamentals of tax treaties, and also provide advanced training to key officials of TPD and ITU on tax treaty negotiations and interpretation and application of tax treaties.

Detailed table of recommendations

Possible Measures	**Possible Actions**	**Possible capacity-building needs and assistance**
Preventing Tax Treaty Abuse (OECD/G20 BEPS Action 6): **(i)** Implement DRMS strategy concerning tax treaties: - refraining from new negotiations unless necessary; - conducting cost-benefit analysis; - clearly stating country tax treaty policy by: (1) having an official Uganda Model Convention available to all relevant stakeholders, and (2) setting (re)negotiation priorities for treaties in force and negotiations with other countries.	**(a)** To enforce existing DRMS tax treaty policy: refraining from entering into new tax treaties unless it is necessary. **(b)** TPD to conduct cost-benefit analysis for tax treaties in general and for existing tax treaties in particular. If convenient, assign this study to external consultant(s). Use this analysis to input the follow-up strategy. **(c)** Prioritize treaty (re)negotiations in view of investment flows and treaty-shopping risks. **(d)** TPD to review, in consultation with ITU, the Uganda Model Convention, with the aim to have an official country model approved by Cabinet. In particular, TPD to align this model with the EAC Model Convention considering the DRM4D	**(1)** Training for junior staff of TPD and ITU on fundamentals of tax treaties, considering in particular tax treaties in force and treaty abuse, and including treaty shopping and OECD/G20 BEPS Action 6 Minimum Standards. **(2)** Advanced training on the OECD/G20 BEPS Action 6 Minimum Standards, particularly, practical application of anti-abuse provisions aiming to evaluate

© 2024 IBFD

(ii) Align the provisions of the Uganda Model Convention with those of the EAC Model Convention. **(iii) A**dopt OECD/G20 BEPS Action 6 Minimum Standard in tax treaties in force and new tax treaties. **(iv) A**pply anti-abuse treaty provisions effectively. **(v)** Provide training to junior staff of TPD and ITU, generally about international taxation and specifically about treaty abuse, including treaty shopping, Action 6 Minimum Standards and tax treaty negotiation.	(amended) Ugandan Model Convention. If assigned to an external consultant, use the external consultant analysis to establish the tax treaty policy and implement follow-up. **(e)** Continue the endeavor to incorporate OECD/G20 BEPS Action 6 Minimum Standard in tax treaties in force and new tax treaties. **(f)** When adopted, apply anti-abuse treaty provisions effectively. **(g)** Further build the expertise of the staff involved in tax treaty (re)negotiations. **(h)** Further build the expertise of the staff involved in tax treaty application and interpretation concerning anti-abuse rules.	whether to adopt the PPT rule, the LOB rule or both. **(3)** Advanced workshop on tax treaty negotiations at EAC level using the EAC Model Convention. **(5)** Advanced training on interpretation and application of tax treaties. **(6)** Specific assistance for Uganda to review: - its tax treaty network; and - its country Model Convention. Review on this regard outcome of assistance provided by external consultant funded by the DRM4D project.

3.2.2.3. BEPS Minimum Standard on CbC reporting (OECD/G20 BEPS Action 13)

Strategy

The DRMS 2019/20 - 2023/24 states Uganda's aim of strengthening the EOI by implementing CbC reporting (*see also* sections 2.2.1. and 2.2.2.). However, the country has not yet started to implement this strategy; although there is consensus within both the TPD and ITU about the potential benefits of receiving CbC reports, there is not yet any specific plan. Furthermore, the tax authorities have not yet fully analyzed the OECD/G20 BEPS Action 13 Minimum Standard requirements.

It is suggested that the TPD, in consultation with the ITU, evaluates the measures that need to be adopted and then make a specific plan for implementing CbC reporting (*see below*).

Adoption of measures

Concerning OECD/G20 BEPS Action 13 Minimum Standards, Uganda does not have in place the domestic legal and administrative framework for CbC reporting. However, it almost has in place the EOI framework, i.e. international information exchange mechanisms and the necessary domestic legislation to enforce EOI. In this regard, Uganda has signed the Convention on Mutual Administrative Assistance in Tax Matters (MAAC). The country also has the necessary legislation to enforce the legal protection of the confidentiality of reported information (*see* sections 2.3.1.2. and 2.3.1.4.).

Therefore, it is suggested that the Uganda tax authorities take steps to plan the adoption of the model domestic legal and administrative framework for CbC reporting, including IT requirements, and also to ratify the MAAC.

© 2024 IBFD

It should be noted, however, that the fact that Uganda is not a member of the IF may make difficult in practice to agree with relevant countries to exchange CbC reporting. This is due to the absence, in this case, of a structured peer review process to check whether all requirements, including confidentiality, are met.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy, and then possible changes to transfer pricing legislation, including CbC reporting. Within URA, the ITU deals exclusively with the application of transfer pricing legislation and transfer pricing audits.

See section 3.2.2.2. for a general description of the challenges of TPD and ITU. *See* sections 2.4.5. and 2.5.5. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

Concerning, particularly, transfer pricing and OECD/G20 BEPS Action 13 Minimum Standards, the TPD and ITU's most senior staff have sufficient expertise on transfer pricing. However, the level of expertise among other officers is not sufficient and there is a rather substantial gap between most senior members and other members of both the TPD and ITU.

Both TPD and ITU have not yet fully analyzed the OECD/G20 BEPS Action 13 Minimum Standard requirements and what Uganda would then need to fulfil to be able to receive CbC reports.

It is suggested that the tax authorities provide training to junior staff of TPD and ITU on transfer pricing, and also provide training to key officials of TPD and ITU specifically on CbC reporting, the requirements of OECD/G20 BEPS Action 13 Minimum Standard and the situation of Uganda in relation to these requirements including IT infrastructure and IT staff.

See sections 2.4.5., 2.5.5. and 2.6.3.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
CbC Reporting (OECD/G20 BEPS Action 13): **(i)** Implement DRSM strategy by taking concrete steps: - TPD and ITU to analyze the OECD/G20 BEPS Action 13 Minimum Standard requirements and the situation of Uganda in respect of these; particularly whether this is practical if Uganda is not an IF member; and - TPD, in consultation with ITU, to evaluate and make a specific plan for implementing CbC reporting.	**(a)** TPD and ITU to analyze the OECD/G20 BEPS Action 13 ToR for Peer Review and then evaluate requirements that need to be met to implement CbC reporting and then be able to receive reports. **(b)** TPD and ITU to make a plan for adopting necessary requirements legislative, administrative and IT requirements based on model OECD/G20 BEPS Action 13 framework for this. **(c)** TPD to take steps for Uganda to ratify the Convention on Mutual Administrative Assistance in Tax Matters.	**(1)** Specific workshop with key officers of TPD and ITU on OECD/G20 BEPS Action 13 Minimum Standard requirements and ToR for Peer Review with the aim to evaluate measures to be adopted and make a specific implementation plan. **(2)** Training for junior staff of TPD and ITU on fundamentals of transfer pricing including OECD/G20

© 2024 IBFD

(ii) Based on (i): - adopt model domestic legal and administrative framework for CbC Reporting; and - ratify the Convention on Mutual Administrative Assistance in Tax Matters. **(iii)** In due time, use effectively CbC reports received.	**(d)** ITU to evaluate how CbC report may be used for risk assessments and plan necessary measures for this.	BEPS Action 13 Minimum Standard. **(3)** Specific advanced training for key officers of TPD and ITU on OECD/G20 BEPS Action 13 Minimum Standard requirements, their implementation and effective use.

3.2.2.4. BEPS Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14)

Strategy

Albeit stating a clear position concerning tax treaty abuse and renegotiation of tax treaties to introduce anti-abuse provisions, the strategy documents do not contemplate tax treaty dispute resolution via MAPs (*see* sections 2.2.2. and 2.3.1.3.). Moreover, the tax authorities do not seem to be aware of all the elements of OECD/G20 BEPS Action 14 Minimum Standards, which comprise specific tax treaty provisions, domestic law provisions, administrative regulations and practical implementation of a MAP.

Tax treaty dispute resolution is not considered a priority for Uganda. Nonetheless, it is suggested that the tax authorities analyze OECD/G20 BEPS Action 14 Minimum Standards and, when reviewing their strategy documents including tax treaty policy, evaluate the relevance and the level of priority to be given to tax treaty dispute resolution.

Adoption of measures

As regards tax treaty measures, the country has a position to adopt the Minimum Standard, i.e. article 25, paragraphs (1), (2) and (3) of the 2017 OECD Model Convention, which is included in the EAC Model and in the proposed DRM4D (amended) Uganda Model Convention. However, none of Uganda's tax treaties in force has fully adopted these provisions (*see* section 2.3.1.5.).

It is suggested that Uganda defines in its tax treaty policy the relevance to be given to these provisions in its bilateral (re)negotiations and multilateral renegotiation in the context of the EAC, taking into consideration the view of the international community (i.e. Minimum Standard), and (re)negotiates its tax treaties following such policy.

Uganda does not yet have in place the domestic legal and administrative framework or the practical implementation of MAP required by the Minimum Standard. It is therefore suggested that URA makes MAPs effectively available for taxpayers by clarifying and making publicly available the procedure and documentation required to submit MAP requests.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy, including tax treaty policy. Within URA, the ITU and Tax Offices deal with

© 2024 IBFD

international taxation, including all tax treaty-related matters. Comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges of the TPD and ITU. *See* sections 2.4.5. and 2.5.5. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

Concerning tax treaties in general, the TPD and ITU's most senior staff have sufficient expertise on various tax treaty matters including MAPs. However, the level of expertise among other officers is not sufficient and there is a rather substantial gap between most senior members and other members of both the TPD and ITU.

It is suggested that the tax authorities provide training to junior staff of the TPD and ITU on the fundamentals of tax treaties and tax treaty dispute resolution, and also provide advanced training to key officials of the TPD and ITU on MAPs.

The TPD and ITU have not yet fully analyzed the OECD/G20 BEPS Action 14 Minimum Standard requirements and what Uganda would need to fulfil to meet these. It is suggested to provide training to key officials of the TPD and ITU specifically on OECD/G20 BEPS Action 14 Minimum Standard and its 21 elements, the work of the OECD with other countries to implement such standards, and possible feasible implementation by Uganda (i.e. what Uganda would need to fulfil it besides tax treaty provisions, i.e. domestic legislation and administrative framework and practical implementation of MAPs).

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Effective Tax Treaty Dispute Resolution (OECD/G20 BEPS Action 14): **(i)** Tax authorities to analyze OECD/G20 BEPS Action 14 Minimum Standard, specifically, what Uganda would need to fulfil it besides tax treaty provisions, i.e. domestic legislation and administrative framework and practical implementation of MAP. **(ii)** Tax authorities to state in strategy documents, including tax treaty policy, the priority to be given to tax treaty dispute resolution. **(iii)** Based on **(ii),** tax authorities to define in the tax treaty policy the relevance to be given to these provisions in its bilateral (re)negotiations and multilateral renegotiation in the context of the EAC and then (re)negotiate treaties following such policy.	**(a)** TPD and ITU to analyze OECD/G20 BEPS Action 14 Minimum Standard, its relevance for Uganda and then state its priority in the DRSM. **(b)** Based on (a), if necessary, URA to evaluate the costs of implementing this standard and make a plan for it. **(c)** Meanwhile (a) and (b) are completed, URA to make MAP effectively available for taxpayers by providing in its website the procedure and documentation to request MAP. **(d)** Tax authorities to (re)negotiate tax treaties incorporating Art. 25, paras (1), (2) and (3) of the EAC model and proposed DRM4D (amended) Uganda Model Convention.	**(1)** Practical workshop for key officials of TPD and ITU on Action 14 Minimum Standard and its 21 elements, work of OECD with other countries to implement such standard, and possible implementation in Uganda. **(2)** Training for junior staff of TPD and ITU generally about tax treaties and specifically about tax treaty dispute resolution.

© 2024 IBFD

(iv) Uganda tax authorities to implement strategy and monitor this.		

3.3. Possible measures regarding base erosion and profit shifting issues other than the BEPS Minimum Standards

3.3.1. OECD/G20 BEPS Action 4 (base erosion involving interest deductions and other financial payments)

Strategy

In 2018 the country adopted some elements of OECD/G20 BEPS Action 4 recommendations, i.e. the EBITDA-based limitation on interest deductibility rule (EBITDA-based rule). This rule replaced the former thin-cap rules, which resulted in having a general negative incidence onf the effective tax rate.

The current strategy documents do not refer to the monitoring of the progress made in terms of addressing BEPS issues involving interest deductions and the assessment of the rules currently in place. It is therefore suggested that future strategy documents incorporate this priority. Specifically, the introduction, within the the TPD/URA, of internal procedures is suggested to carry out the assessment of the effectiveness of the existing rules on the basis of relevant data. During the interview process, the TPD already agreed on the need to perform such an evaluation. URA has also identified specific issues when enforcing this rule, which may need to be further analyzed (*see below*).

Adoption of measures

In 2018, Uganda adopted a rule limiting the deductibility of interest for entities part of a group up to 30% of the EBITDA. The rule generally follows the best-practice approach recommended by OECD/G20 BEPS Action 4, but with a deviation, as it applies to gross interest rather than net interest expenses. According to OECD/G20 BEPS Action 4, the application of the fixed-ratio rule to gross interest may lead to double taxation issues. It is therefore recommended to evaluate whether restricting the deductibility of net interest expenses may lead to more efficient and equitable results (*see* section 2.3.2.1.).

Additionally, URA has identified the following issues when enforcing this rule due to its interaction with the domestic law:

- it favours asset-rich businesses due to the domestic law regime of accelerated capital allowance; and
- it excludes rental income and rental businesses (the EBITDA-based rule applies to gross income; however, under domestic law, rental income is excluded from the definition of gross income, as it is subject to different tax rules and to a specific deduction cap).

It is recommended to address these issues in the context of the evaluation of the effectiveness of this rule. Specifically, it is suggested to consider whether an EBIT-based threshold may be more suitable to measure taxable earnings under the domestic system. Additionally, it is suggested to evaluate whether the rules applicable to rental income effectively address excessive borrowing or lead to unintended differential treatments instead.

© 2024 IBFD

Finally, the country has not introduced several best-practice recommendations included in Action 4 of the BEPS Project. It is recommended that the evaluation of the EBITDA-based rule also determines whether the other best practice recommendations of OECD/G20 BEPS Action 4 may still be relevant for the country.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy and then determining possible amendments to deal with base eroding payments. Within URA, the ITU and Tax Offices deal with international taxation, including domestic legislation such as withholding taxes on outbound payments and the EBITDA-based rule. The comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges facing the TPD and ITU. *See* sections 2.4.1. and 2.5.1. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

Regarding specifically the EBITDA-based rule, both the TPD and ITU have a good level of expertise on the application of the EBITDA-based rule; however, they agree that it is necessary to further refine this rule based on the above-described implementation issues detected by the ITU, and also to determine whether other best practices recommended by OECD/G20 BEPS Action 4 may be suitable.

It is suggested that the tax authorities provide training to the junior staff of TPD and ITU, generally, on international taxation and, specifically, on the application of the EBITDA-based rule; and also provide an advance training to key officials of the TPD and ITU on other best practices recommended by OECD/G20 BEPS Action 4.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Base Erosion Involving Interest Deductions (OECD/G20 BEPS Action 4): **(i)** Future strategy documents to specify the need to monitor the BEPS issue and then assess the effectiveness of the EBITDA- based rule by: - monitoring relevant data; and - considering issues detected by URA. **(ii)** Decide whether to introduce changes based on the evaluation of the effectiveness of the EBITDA- based rule (*see* Possible Actions).	**(a)** MOFPED/URA to introduce formal internal procedures to assess the effectiveness of the EBITDA. **(b)** Evaluate possible changes to the EBITDA-based rule, in particular: **(b.1)** whether to restrict deductibility of net interest instead of gross interest to avoid potential double taxation. **(b.2)** whether an EBIT- based threshold may be more suitable to measure taxable earnings. **(b.3)** whether the rules applicable to rental income effectively address excessive borrowing or lead to unintended differential treatments instead.	**(1)** Specific workshop for key officials from URA and MOPFED with the aim to study best practices recommended by OECD/G20 BEPS Action 4, evaluate issues relating to the application by ITU of EBITDA-based rule and potential amendments, including drafting possible amendments. **(2)** Training for junior staff of TPD and ITU, generally, about international taxation and, specifically, about the application of the EBITDA-based rule

© 2024 IBFD

	(c) Evaluate whether the other best practices recommended by OECD/G20 BEPS Action 4 may be adopted.	

3.3.2. OECD/G20 BEPS Action 6 (anti-avoidance measures other than the BEPS Minimum Standard) and OECD/G20 BEPS Action 7 (preventing the artificial avoidance of PE status)

Strategy

See section 3.2.2.2., the comments and suggestions in which are also applicable to this section.

Adoption of measures

Uganda has a position to incorporate the anti-avoidance measures established by OECD/G20 BEPS Actions 6 and 7 recommendations into its existing and new tax treaties as provided by its Treaty Model and/or the EAC Model. Both Models are not aligned in respect of these provisions. Uganda should aim to adopt these anti-avoidance provisions in all its tax treaties. However, to date, only less than a handful of its tax treaties in force include some form of these provisions (*see* sections 2.3.2.2. and 2.3.2.3.).

It is suggested that Uganda aligns its Treaty Model and the EAC Model. Indeed, it is not clear what the reasoning is for excluding some of these provisions in the proposed DRM4D (amended) Uganda Model Convention but including them in the EAC Model. Specific assistance could be helpful for the Uganda to review its Treaty Model (*see* sections 2.3.2.2. and 2.3.2.3.).

It is therefore suggested that the tax authorities evaluate:

- the level of priority of including these anti-avoidance provisions in Uganda tax treaties (tax treaty policy);
- if high priority is given, the reason should be established why those provisions were not included in the proposed DRM4D (amended) Uganda Model Convention or in the final text of treaty (re)negotiated (e.g. they may not have been accepted by the other treaty partner); and
- possible measures to successfully (re)negotiate these provisions (e.g. improving negotiation techniques, including possible compromises to secure their agreement).

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy, including tax treaty policy. Within URA, the ITU and Tax Offices deal with international taxation, including all tax treaty-related matters. The comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges of TPD and ITU. *See* sections 2.4.4. and 2.5.4. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

© 2024 IBFD

Regarding OECD/G20 BEPS Actions 6 and 7, it is suggested that the tax authorities provide training to junior staff of TPD and ITU on the fundamentals of tax treaties, and also provide advanced training to key officials of TPD and ITU on tax treaty negotiations and interpretation and application of tax treaties, including in particular anti-abuse rules, PEs and attribution of profits to PEs.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Tax Treaty Abuse (OECD/G20 BEPS Actions 6 and 7): (*See* suggestions **in Section 3.2.2.2.,** which are applicable to this Section too) **(i)** Review tax treaty policy and align the Uganda Model Convention with the EAC Treaty Model. Evaluate level of priority of these provisions when (re)negotiating tax treaties. **(ii)** Adopt OECD/G20 BEPS Actions 6 and 7 recommendations in tax treaties in force and new tax treaties according to the country models. Evaluate the outcome of (re)negotiations and consider possible measures to successfully (re)negotiate them. **(iii)** When adopted in tax treaties, apply anti-abuse treaty provisions effectively.	**(a)** TPD to review tax treaty policy to align the Uganda Model Convention and the EAC Treaty Model. TPD in consultation with URA to evaluate level of priority of these provisions when (re) negotiating tax treaties. **(b)** MOFPED to (re)negotiate tax treaties adopting these provisions considering their level of priority. Evaluate outcome of (re)negotiations and adjust negotiations as necessary. **(c)** Further strengthen the expertise of the staff involved in tax treaty negotiations **(d)** Further strengthen the expertise of the staff involved in interpretation and application of tax treaties in order to apply anti-abuse treaty provisions effectively.	**(1)** Training for junior staff of TPD and ITU on fundamentals of tax treaties, considering in particular tax treaties in force and treaty abuse, and including treaty shopping and Actions 6 and 7 recommendations. **(2)** Advanced training for ITU on interpretation and application of tax treaties, including specifically OECD/G20 BEPS Actions 6 (not Minimum Standards) and 7, PEs and attribution of profits to PEs. See also Section 3.2.2.2, number (3).

3.3.3. OECD/G20 BEPS Actions 8-10 (transfer pricing), OECD/G20 BEPS Action 13 (transfer pricing documentation other than the BEPS Minimum Standard) and PCT toolkit recommendations regarding the lack of comparability data necessary for transfer pricing analyses

Strategy

The strategy documents report difficulties in enforcing the domestic transfer pricing legislation, which follows the OECD/G20 BEPS Actions 8-10 and 13 recommendations as embedded in the OECD TPG, as data on independent transactions to form a basis for arm’s length pricing is almost impossible to obtain. The ITU has taken various steps to overcome this including using foreign databases, following different capacity building and later specifically engaging with the work of ATAF on the matter.
(*See* sections 2.2.1. and 2.2.2.)

© 2024 IBFD

It is suggested that URA further implements the country strategy to fully administratively implement OECD/G20 BEPS Action 13 recommendations by explicitly requiring taxpayers to file the Master File and Local File for the ITU to obtain better information concerning MNEs' operation and to evaluate whether the legal basis is clear and strong enough, including administrative penalties if administrative requirements are not fulfilled by the taxpayer, to enforce this. It is also suggested that the ITU carefully evaluates, based on the experience accumulated, the different proposals of the PCT toolkit to deal with the lack of comparables and discusses with the TPD possible steps to further deal with this issue.

Adoption of measures

Uganda has domestic legislation providing for the arm's length principle and, in principle, this legislation fully follows the OECD TPG as supplemented and updated from time to time. Therefore, Uganda has, in principle, formally fully adopted the recommendations of Actions 8-10 and 13.

Nevertheless, URA faces challenges in applying this legislation relating to:

- in case of incorrect TP, there are no clear sanctions in the legislation;
- the lack of comparables data;
- timely obtaining information from other countries through EOI; and
- lack of quality of the TP documentation submitted by taxpayers in case of audits.

Particularly, these problems are accurate in the commodities sector (*see* sections 2.3.2.4., 2.3.2.6. and 2.3.2.9.).

It is suggested that the Uganda tax authorities:

- take measures for URA to be able to obtain information from the Central Bank and, in general, from the financial sector. For this it would be necessary to have a clear assessment about the bank secrecy in relation to information required by URA for tax purposes;
- evaluate measures to improve EOI on request for URA to obtain timely information from other countries;
- evaluate to introduce penalties in case of transfer pricing adjustments made by URA;
- fully administratively implements OECD/G20 BEPS Action 13 documentation requirements, as provided by the TPG, by requiring taxpayers to file the Master File and Local File, establishing appropriate penalties in case of failure of submitting such information; and
- take steps to effectively use the ATAF database when it becomes available.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy, and then possible changes to transfer pricing legislation. URA currently has an operational unit, the ITU, in charge of dealing exclusively with the application of transfer pricing legislation and transfer pricing audits.

See section 3.2.2.2. for a general description of the challenges of the TPD and ITU. *See* sections 2.4.5. and 2.5.5. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

About 75% of the work of the ITU relates to transfer pricing, which is mostly audits of large taxpayers. Due to this and the importance given by the tax authorities to combat TP abuse, in the interviews during the in-country visit, the TPD and ITU officers expressed their view to consider an organizational separation

© 2024 IBFD

between TP and other international taxation matters, as it is done in other countries. A possibility would be to have an URA Assistant Commissioner with two units, TP and international taxation. Indeed, the above organizational division is followed in various other tax administrations due to the specificity of TP.

It is suggested that the Uganda tax authorities carry out a cost-benefit analysis of such organizational separation considering particularly staffing, reporting structure and budgetary needs.

Generally, the ITU's most senior staff have sufficient expertise on TP. These officers seem to have a sufficient level of expertise to administer domestic TP legislation, which refers directly to the OECD TPG (that have incorporated the recommendations of OECD/G20 BEPS Actions 8-10). The ITU has recently achieved important milestones in terms of outcomes of TP audits. However, there is a substantial gap between most senior members and other more junior members of the ITU. In addition, the ITU's expertise on OECD/G20 BEPS Action 13, TP documentation, i.e. Master File and Local File, and on the PCT toolkit recommendations seems to be more limited. Besides other training on TP, reportedly, the ITU has benefited substantially from working with the ATAF in the format of practical workshops on TP, where TP cases from different countries are discussed and then officers learn about the experiences from colleagues from other countries from the region. *See* sections 2.4.5., 2.5.5. and 2.6.3.

It is suggested that:

- the ITU senior staff study the practical implementation and benefits of obtaining information by means of the Master File and Local File as established by the OECD TPG;
- the ITU senior staff evaluate carefully the recommendations of the PCT toolkit to deal with the lack of comparability information; and
- the Uganda tax authorities provide training to junior staff of the TPD and ITU about TP, in general, and OECD/G20 BEPS Actions 8-10 and 13 recommendations, in particular, as adopted in the OECD TPG. Conceptual training should also be followed by practical training.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Transfer Pricing (OECD/G20 BEPS Actions 8-10 and Action 13; and PCT Toolkit Recommendations): **(i)** Uganda tax authorities to implement TPG documentation requirements: Master File and Local File. **(ii)** Uganda tax authorities to evaluate the different proposals of the PCT toolkit to deal with the lack of comparables. **(iii)** Uganda tax authorities to clarify and when necessary to regulate that the tax authorities can have access to, for them	**(a)** URA to require taxpayers to file the Master File and Local File as provided by the TPG, establishing appropriate penalties in case of failure of submitting such information. **(b)** ITU to carefully evaluate, based on experiences accumulated, the different proposals of the PCT toolkit to deal with the lack of comparables. and to discuss with TPD possible steps to further deal with this issue. **(c)** TPD and ITU to discuss with the financial institutions regulator and other relevant government stakeholders the access by URA to financial	**(1)** Workshop for ITU key officials on the practical implementation of OECD/G20 BEPS Action 13 Master File and Local File. **(2)** Workshop with key officials of the TPD and ITU on the different measures to deal with the lack of comparables, the PCT toolkit recommendations, with the aim on evaluating possible measures feasible for Uganda to better deal with this issue.

© 2024 IBFD

relevant information, held by financial institutions. **(iv)** Uganda tax authorities to evaluate possible measures to improve the EOI with other countries. **(v)** Uganda tax authorities to evaluate introducing penalties in case of transfer pricing adjustments made by the URA. **(vi)** Uganda tax authorities to evaluate creating a TP unit within URA (dealing exclusively with TP matters). **(vii)** Uganda tax authorities, in due time, to evaluate the effectiveness of these domestic TP rules to deal with the BEPS issue (to avoid abuse of TP).	institutions information for tax purposes; and, if necessary, to evaluate possible legislation amendments to overcome limitations. **(d)** TPD and ITU to consider bilateral dialogue with specific country(ies) to improve the EOI. **(e)** TPD and ITU to evaluate introducing penalties in case of TP adjustments made by URA, and, if consider adequate, implement this by introducing legislative amendments and/or administrative regulations. **(f)** URA to carry out a cost-benefit analysis of the organizational separation of the ITU in two units: TP unit and international taxation unit, considering particularly staffing, reporting structure and budgetary needs. **(g)** TPD and ITU to monitor issues related to these domestic TP rules to deal with the BEPS issue (to avoid abuse of TP).	**(3)** ITU to further look for specific assistance by external consultants to address challenges in the application of its TP legislation. **(4)** General training for ITU junior staff on the practical application of OECD TPG by URA. **(5)** ITU to further work with ATAF including also for making effective use of ATAF database.

3.3.4. OECD/G20 BEPS Action 11 (measuring and monitoring BEPS)

Strategy

The country strategy documents state the aim of addressing the challenges of the tax administration concerning data analysis, including international tax, and improving the transparency of the tax system, including annual publication of tax expenditures, in line with best international practice (*see* section 2.2.1.). However, the Uganda tax authorities have not yet started to measure BEPS issues and/or analyzed the revenue impact of anti-BEPS measures adopted in the domestic legislation. The Uganda tax authorities have not yet fully analyzed the implementation of OECD/G20 BEPS Action 11 recommendations nor do they seem to see this as a priority.

It is suggested that the tax authorities state in their strategy documents the priority to be given to start measuring and monitoring BEPS and BEPS countermeasures, and also the need to evaluate the implementation of such a strategy. To do this, the benefits of measuring and monitoring BEPS should be taken into account, as well as (i) the availability of information; (ii) the feasibility of measures to obtain unavailable information; and (iii) the resources necessary to obtain and process information that is not yet available.

Adoption of measures

Once the strategy documents state the priority to be given to start measuring and monitoring BEPS. It is therefore suggested that:

- the TPD and ITU analyze OECD/G20 BEPS Action 11 recommendations;
- make an implementation plan to start measuring and monitoring BEPS using as appropriate the recommendations of OECD/G20 BEPS Action 11; and

© 2024 IBFD

- in the event that the tax authorities so decide, in addition to adopting the necessary administrative measures, Uganda may consider working together with the OECD on this as suggested in the Action point, and/or also with other regional organizations (*see* section 2.3.2.5.).

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Tax Research Section is in charge of producing tax statistics. Within URA, the Research and Innovation Unit is responsible for collecting and analyzing economic and statistical information. Both units are operational; however, they have not been instructed to collect and analyze information on BEPS (*see* section 2.4.6.).

In the event that MOFPED and URA decide to start measuring and monitoring BEPS, it is suggested that they introduce the necessary administrative procedures in order to coordinate their work, instruct the relevant units concerned and, if necessary, providing additional resources, including necessary staff and IT infrastructure (IT staff, hardware and software).

Reportedly, both the TPD Tax Research Section and URA Research and Innovation Unit have a sufficient level of expertise among their staff to carry out their responsibilities. However, they have no expertise on adopting measures for measuring and monitoring BEPS (*see* section 2.5.6.).

It is therefore suggested that its staff receive specific training on the relevance and processes to start measuring and monitoring BEPS, including the recommendations of OECD/G20 BEPS Action 11. Accordingly, training should include general training on OECD and G20 BEPS issues, specific training on the recommendations of Action 11 of the OECD/G20 BEPS Project, and conceptual and practical training on measurement and monitoring BEPS.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Measuring and Monitoring BEPS (OECD/G20 BEPS Action 11): **(i)** Tax authorities to state in their strategy documents the priority to be given to start measuring and monitoring BEPS and BEPS countermeasures, and the need to evaluate the implementation of such strategy. **(ii)** For (i), analyze the benefits of measuring and monitoring BEPS, as well as (1) the availability of information; (2) the feasibility of measures to obtain unavailable information; and (3) the resources necessary to obtain and	**(a)** TPD and ITU to analyze the relevance of measuring and monitoring BEPS. **(b)** TPD and ITU to analyze OECD/G20 BEPS Action 11 recommendations. **(c)** MOFPED and URA to decide on the priority to be given to measuring and monitoring BEPS according to the countries' strategy documents. **(d)** Based on (c), TPD and ITU to make an implementation plan to start measuring and monitoring BEPS, including: - coordinating their work; - instructing relevant units; and - determining which data is relevant to collecting; - determining necessary resources, including necessary staff and IT infrastructure.	**(1)** General training on OECD/G20 BEPS issues. **(2)** Specific training on the recommendations of OECD/G20 BEPS Action 11 and on the work done by OECD since 2015, ATAF and other countries. **(3)** Practical training on BEPS measurement and monitoring.

© 2024 IBFD

process information that is not yet available. **(iii)** Uganda tax authorities: (1) to analyze OECD/G20 BEPS Action 11 recommendations; (2) to make an implementation plan to start measuring and monitoring BEPS; and (3) if so decided, Uganda may consider working together with the OECD on this as suggested in the Action point, and/or also with other regional organizations.		

3.3.5. Decision on signing the MLI or to bilaterally renegotiate tax treaties [59]

Strategy

The DRMS refers to the renegotiation of existing tax treaties to incorporate treaty anti-abuse provisions based on international best practices; however, it does not state a position on the MLI (*see* sections 2.2.1., 2.3.1.3., 2.3.2.2. and 2.3.2.3.).

MLI policy considerations

Several OECD/G20 BEPS Actions (including Action 6, on the prevention of various types of treaty abuse, Action 7, on artificial avoidance of PE status, and Action 14, on international dispute settlements) contain recommendations to amend tax treaties to combat the improper use of tax treaties or to deal with possible disputes between states that may result from these measures.

However, the high number of tax treaties and/or the inevitable full renegotiation of each of these treaties may make updating the current tax treaty network highly burdensome and time-consuming. The report on Action 15 of the OECD/G20 BEPS Action Plan (Developing a Multilateral Instrument to Modify Bilateral Tax Treaties) therefore concluded that a multilateral instrument to modify bilateral tax treaties to implement the tax treaty-related BEPS measures was not only feasible but also desirable in order to streamline the harmonious adoption of anti-avoidance measures. Countries may sign up to the MLI or choose to bilaterally renegotiate their tax treaties to incorporate treaty anti-abuse provisions considered important by that country.

Whether the MLI is more convenient than bilateral negotiations depends on the particular situation of each country and its treaty partners.

When making such a decision, it should be considered that the MLI allows a country to list those tax treaties that it would like to be covered and to make reservations on specific provisions. It also contains several optional provisions. This means that a country contemplating signing the MLI must make a number of decisions regarding these various situations. Thus, although it is a valuable tool for swiftly incorporating certain anti-avoidance provisions, it requires a number of decisions based on a country's tax treaty policy. As some developing countries may not have a clear tax treaty policy, it requires in those situations

[59] GIZ (2018), supra n. 8, at pp. 12-14.

© 2024 IBFD

explanation and consideration with regard to which treaties it wishes to be covered by the MLI and which substantive MLI provisions it wishes to be applicable. Furthermore, even if a country signs the MLI, it may still be necessary to renegotiate a number of bilateral tax treaties (e.g. if a treaty partner has not signed the MLI or has decided not to list its tax treaty).

Uganda tax treaty network and policy

Uganda currently intends to adopt the treaty-related recommendations through bilateral (re)negotiations and multilateral negotiation with the EAC member countries. However, the country does not yet have an official position on signing or not signing the MLI.

It is suggested that Uganda tax authorities carefully consider this decision (based on the above policy considerations the (staff) resources needed for its potential application and possible time frame) and, if it decides to sign the MLI, to incorporate its implementation in its strategy documents.

When doing so, Uganda tax authorities should take into account the number of tax treaties that would need to be updated and whether those treaties would rather need to be comprehensively reviewed considering other relevant issues (e.g. allocation of taxation rights between the countries). As a first step, Uganda could monitor whether its treaty partners (i) have ratified the MLI; (ii) have included the treaty with Uganda as a “Covered Tax Agreement”; and (iii) have chosen MLI BEPS provisions in line with Uganda tax treaty policy.

Regarding this, Uganda has nine tax treaties in force that do not contain the BEPS anti-avoidance provisions, and which might in some cases contain relatively old treaty provisions. Eight out of the nine Uganda treaty partners have signed the MLI: Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa and United Kingdom. These countries, except Norway, have included their tax treaty with Uganda as a Covered Tax Agreement. Accordingly, if Uganda were to ratify the MLI, it would in principle amend seven of its tax treaties incorporating at least the Minimum Standards; however, two of these treaties are being bilaterally renegotiated (i.e. treaties with Mauritius and the Netherlands), therefore, the MLI would amend probably five treaties (*see* Annex B.3.3.).

In the case that Uganda makes the decision to sign the MLI, it would have to carefully decide which treaties it wants to be covered and which provisions it wants to choose, taking into account its particular tax treaty network and policy, and the position of its treaty partners.

If Uganda would still need to continue bilaterally renegotiating at least part of its tax treaties and negotiating new tax treaties, it is suggested that it continue to regularly evaluate and update its treaty model and strengthen its tax treaty negotiation skills by implementing specific training on the matter (*see* sections 2.3.2.2., 2.3.2.3 relating to tax treaties).

Tax authorities’ organization and staff expertise

See sections 3.2.2.2. and 3.3.2., the comments and suggestions in which are also applicable to this section.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance

© 2024 IBFD

Signing the MLI: **(i)** Take an informed decision on whether to sign (or not) the MLI. **(ii)** Proceed with making the various choices required if Uganda decides to sign the MLI	(**a**) Analyze the policy considerations supporting the decision to sign (or not) the MLI and assess the required (staff) resources and possible time frame for its application. **(b)** if Uganda decides to sign the MLI, tax authorities to evaluate which treaties to cover and which options to choose, taking into account the country tax treaty network and policy, and the position of/relation with treaty partners (whether they signed the MLI and what choices they made).	**(1)** Specific workshop aiming at weighting the policy considerations supporting the decision to sign (or not) the MLI, analyzing inter alia these considerations, MLI content (anti-avoidance rules), procedural rules and necessary choices for signing (list of reservations and notifications), and positions of treaty partners. **(2)** For (1), technical assistance in assessing the positions of Ugandan treaty partners that have signed the MLI.

3.3.6. PCT toolkit recommendations regarding ineffective or inefficient use of tax incentives

Strategy

The country strategy plans list tax incentives among the targeted tax policy challenges to be addressed with priority (*see* section 2.2.4.). The DRMS, in particular, acknowledges that the domestic tax incentives create perceptions of inequity and resentment and induce interest groups to lobby for their extension, and that without a proper mechanism to monitor the effectiveness and cost of incentives and exemptions, Uganda risks unintended revenue losses and abuse of the system.

To address such problems, the strategy plans prioritize the development of a comprehensive tax expenditure framework. It is therefore recommended that the future strategy plans monitor the progress made in developing such framework. It is also suggested that strategy plans state the need to value the impact of each incentive on investment i.e. its cost (tax expenditure) and benefit (additional investment) and then their potential redundancy.

It is suggested specially that strategy plans state the need to follow the work done in the Inclusive Framework on the two-pillar solution, and to evaluate tax incentives taking into account the emerging implementation of the global minimum tax (OECD/IF Pillar Two).

Adoption of measures

The country offers different tax incentives for investment, such as deductions, capital and depreciation allowances, and tax holidays. Most of the incentives are granted on the basis of eligibility criteria clearly identified by the law, and they are meant to apply automatically. However, tax exemptions may also be granted on a discretionary basis, through a commitment of the government to pay the taxes on behalf of a taxpayer (*see* section 2.3.2.8.).

© 2024 IBFD

As regards the tax holidays, it is recommended to evaluate, on the basis of their concrete impact on investment, whether to maintain them, or to replace them with cost-based incentives, which tend to be more effective according to the PCT toolkit. It is also recommended to clarify on publicly available resources the exact procedure that taxpayers should follow to benefit from the tax holidays, and to verify the correct functioning of their automatic applications, to avoid that taxpayers may avail themselves of the benefits of both incentives and the ordinary tax regime. Finally, should the country decide to maintain existing tax holidays or introduce new tax holidays in the future, it is recommended to make them as temporarily available.

As regards the tax exemptions granted under the letters of commitment issued by MOFPED, it is recommended to adopt measures to reduce or eliminate their discretionary nature, such as including eligibility criteria or conditions, and to prescribe reporting obligations for taxpayers benefiting from such exemptions. This is also compliant with the strategy plans, which set the target of abolishing these discretionary incentives.

Tax authorities' organization and staff expertise

The design and drafting of tax incentives is the responsibility of the TPD Tax Research Section. The TPD is the only department of the government that may formulate tax incentives. Within URA, the following units deal with tax incentives:

- Business Policy Unit - Quality Assurance Division (*see* section 2.4.2.);
- Tax Offices (*see* section 2.4.1.); and
- Research and Innovation Division (*see* section 2.4.3.).

As Uganda has not yet analyzed and decided to implement the PCT toolkit on tax incentives, we have not assessed whether URA's organization and staff expertise is sufficient to deal with this. Nevertheless, we consider that the existing organizational structure is operational and manages tax incentives as instructed. We suggest providing training to key officers within these units on the PCT toolkit recommendations regarding ineffective or inefficient use of tax incentives and on the potential impact of OECD/IF Pillar Two on the Uganda tax incentives. In addition, we suggest specific training for the TPD and URA (Research and Innovation Unit) on how to measure the tax expenditure and also the impact of incentives for investments.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Use of Tax Incentives (PCT Toolkit Recommendations): **(i)** Tax authorities to evaluate tax incentives for investment based on cost-benefit analysis. **(ii)** Tax authorities to review usefulness of tax holidays. **(iii)** Tax authorities to follow the work done in the IF on Pillar Two and also the	**(a)** TPD to design overall evaluation of tax incentives for investment of Uganda considering specifically: - tax expenditure per incentive; and - impact of each incentive on investment. **(b)** TPD to review the tax incentives report prepared within the DRM4D project and to evaluate its recommendations. **(c)** TPD to review tax holidays, considering whether they can be replaced by cost-based incentives: - evaluate, on the basis of their concrete impact on investment, whether to maintain them; - if decided to maintain them:	**(1)** Training for key officials of TPD and URA on the recommendations of the PCT toolkit for effective and efficient tax incentives for investment. **(2)** Specific training for TPD and URA (Research and Innovation Unit) on how to measure the tax expenditure and also the impact of incentives for investments.

© 2024 IBFD

implementation by relevant investor countries of this global minimum tax, to evaluate the potential impact on tax incentives for investment. **(iii)** Tax authorities to review tax exemptions granted by MOFPED on a discretionary basis.	- make them temporarily available; and - clarify on publicly available resources the exact procedure that taxpayers should follow to benefit from the tax holidays; and - verify the correct functioning of their automatic applications. **(d)** TPD to study the OECD/IF Pillar Two and also the implementation by relevant investor countries of this global minimum tax, in particular, whether Uganda tax incentives for investment will result in additional taxation in another country and, if that is the case, potential measures to be adopted by Uganda to levy such tax itself (instead of another country taxing the difference between the global minimum tax and the tax levied by Uganda). **(e)** TPD to evaluate tax exemptions granted by MOFPED on a discretionary basis including their tax expenditure and benefit(s). **(f)** URA to collect the data necessary for TPD above actions.	**(3)** Training on OECD/IF Pillar Two, and the potential impact on the domestic tax system. **(4)** For (3)**,** technical assistance on the potential impact of Pillar Two on Uganda tax incentives.

3.3.7. PCT Toolkit recommendations regarding the offshore indirect transfer of assets located in the country

Strategy

The DRMS 2019/20 - 2023/24 and other strategy documents do not refer to the issue of offshore indirect transfer of assets located in the country (*see* sections 2.2.1. and 2.2.4.). The domestic legislation addressing this BEPS issue is considered very relevant by URA and has been implemented with relevant revenue collection results. However, URA has identified challenges in its application (*see* section 2.3.2.10.).

It is suggested that the Uganda tax authorities state in the DRMS the relevance of properly dealing with this BEPS issue and, accordingly, the need to evaluate the application of the domestic legislation and tax treaty provisions to secure those taxing rights, and make amendments as necessary. In addition, future strategy plans should monitor and evaluate the implementation of such a strategy and also follow the progress made in effectively addressing this BEPS issue based on relevant data.

Adoption of measures

Domestic legislation recommendations

Uganda has adopted domestic legislation that follows one of the possible approaches described in the PCT toolkit regarding offshore indirect transfer of assets located in the country (*see* section 2.3.2.10.); however, URA faces challenges for its effective application and enforcement:

- detection of offshore transfers: obtaining information about offshore transfers resulting in an indirect change of ownership of a resident person;
- valuation issues, particularly, determining the realization and acquisition of all assets and liabilities at market value; and

© 2024 IBFD

- tax collection, particularly for non-regulated sectors, as the resident taxpayer must pay the tax through the deemed disposal provision.

It is suggested that the ITU and URA work jointly with external consultants to further analyze implementation of this legislation by other countries in order to adopt measures to overcome these challenges. A specific workshop with tax officials of countries of the region, if considered necessary, may also help to evaluate possible solutions.

Tax treaty recommendations

The treaty-related measures to address base erosion and profit shifting due to offshore indirect transfer of assets located in the country have been adopted only partially in the treaty with India (*see* section 2.3.2.10.). Uganda may consider that its domestic legislation is not limited by tax treaties as the country taxes its own residents on a deemed disposal provision, nevertheless treaty partners and/or taxpayers may disagree on such interpretation, which may give rise to disputes. This issue has been addressed by the PCT toolkit, which refers to the general principle that tax treaties do not restrict a country's right to tax its own residents. The toolkit states that this principle is also confirmed by the recent changes to the OECD and UN Model Conventions, namely the introduction of paragraph 3 to article 1. This paragraph confirms that principle except where this is intended not to apply and lists the provisions with regard to which that principle is not applicable. So, it seems important for Uganda to include such article 3 paragraph 1.

In the context of the evaluation of current domestic rule in Uganda, it is useful to bear in mind that the PCT toolkit also has another approach by which capital gains made in the context of the indirect transfer of assets are taxed and such taxing rights are secured by including article 13(4) of the 2017 OECD Model and article 13 paragraphs (4), (6) and (7) of the 2021 UN Model.

It is therefore suggested that Uganda evaluates the relevance of tax treaty provisions and their interaction with the existing domestic law. If necessary, the Uganda Model Convention should be reviewed including treaty-related measures to further secure those taxing rights.

Regarding tax treaty measures, *see* section 3.2.2.2., the suggestions in which are also applicable to this section.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy including domestic and tax treaty rules to deal with the indirect alienation of assets. Within URA, the ITU and Tax Offices deal with international taxation, including the indirect alienation of assets. The comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges of the TPD and ITU. *See* sections 2.4.4., 2.4.7., 2.5.4. and 2.5.7. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

It is suggested that the tax authorities provide training to junior staff of the TPD and ITU, generally, on international taxation and, specifically, on the application of the domestic rule to combat the indirect alienation of assets. As mentioned above, the ITU faces particular challenges when applying these rules

© 2024 IBFD

and specific training for key officials to be able to overcome these issues is necessary (*see* capacity building needs and assistance below).

Detailed table of recommendations

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Offshore Indirect Transfer of Assets Located in Uganda (PCT Toolkit): **(i)** Strategy: Uganda tax authorities to state in the DRMS the relevance of the BEPS issue of offshore indirect transfer of assets located in Uganda, the need to evaluate the application of the domestic legislation and tax treaty provisions to secure those taxing rights, and make amendments as necessary. The DRSM to monitor and evaluate implementation of strategy and progress made in effectively addressing this BEPS issue. **(ii)** URA to further analyze implementation of similar domestic legislation by other countries in order to adopt measures to overcome challenges in implementation of domestic legislation: - detection of offshore transfers; - tax computation; and - tax collection **(iii)** Uganda to evaluate relevance of tax treaty provisions and their interaction with the existing domestic tax law.	**(a)** TPD to evaluate relevance and then include in the DRMS the offshore Indirect transfer of assets located in Uganda: - the need to evaluate the application of the domestic legislation in consultation with the ITU; and - the need to have tax treaty provisions to secure those taxing rights. **(b)** TPD to monitor and evaluate implementation of strategy stated in **(a).** **(c)** URA to make inventory of issues concerning application of domestic legislation and possible necessary amendments and discuss this in ad-hoc meeting(s) with the TPD. **(d)** TPD to evaluate relevance of tax treaty provisions (i.e. articles 1 (3) and 13 (4) of the OECD and UN Models and article 13 (7) of the 2021 UN Model) and their interaction with the existing domestic law. TPD to review, if necessary, the Uganda Model Convention to include relevant treaty-related measures. **(e)** TPD to (re)negotiate tax treaties considering the priority to be given to the provisions stated in (d) and, if necessary, amend domestic law.	**(1)** ITU and TPD to work jointly with external consultants to further analyze implementation of domestic legislation about offshore indirect transfer of assets with the aim to have concrete alternatives for its refinement: - application issues; and - approach by other countries to these issues. **(2)** ITU and TPD to participate in workshop(s), when possible, with tax officials of countries of the region to discuss practical issues of domestic legislation about offshore indirect transfer of assets. **(3)** Specific training for junior staff of TPD and ITU dealing with domestic legislation about offshore indirect transfer of assets and relevance of tax treaty provisions. Concerning tax treaty capacity building, *see* Section 3.2.2.2. above.

3.3.8. UN Tax Handbook recommendations regarding taxation at source on base–eroding payments

Strategy

The DRMS 2019/20 - 2023/24 prioritizes, among other challenges, the need to review and strengthen the source rules and the withholding tax on technical fees paid to non-residents to preserve source taxing rights (*see* sections 2.2.1., 2.2.4. and 3.1.).

Moreover, the country strategy plans touch upon the issue of inequitable outcomes deriving from the current tax treaty network (*see* section 2.2.1.), and the need to renegotiate treaties to ensure, among others, that the country exercises source taxation on lease payments and technical fees.

© 2024 IBFD

Uganda has domestic legislation in place as described below and has preserved its taxing rights in a number of tax treaties, but not in all of them. It is therefore suggested that Uganda takes further steps to implement its strategy as stated in the DRSM and (re)negotiate all tax treaties adopting the relevant provisions. In addition, future strategy plans should monitor and evaluate the implementation of such a strategy and also follow the progress made in effectively addressing this BEPS issue based on relevant data.

Adoption of measures

Domestic legislation recommendations

The country has adopted domestic measures to tax outbound payments in general, including rents, royalties and service charges (*see* section 2.3.2.11.).

It is suggested that the TPD and ITU monitor base eroding payments and the effectiveness of the measures adopted to deal with them and, in due course, decide whether these measures are sufficient (*see* the general comment at the beginning of section 3.).

Tax treaty recommendations

More than 30% of the tax treaties signed by Uganda and currently in force provide for taxation at source of base eroding payments, but not all treaties (*see* section 2.3.2.11.).

It is suggested that Uganda (re)negotiates treaties that do not yet provide for source taxation of such payments, also pursuant to what is stated in the strategy plans, in order to remove potential tax treaty obstacles to taxation at source.

Regarding tax treaty measures, *see* sections 2.5.4. and 3.2.2.2., the suggestions in which are also applicable to this section.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes Section is the department responsible for formulating the international tax policy including domestic and tax treaty rules to deal with taxation at source on base-eroding payments. Within URA, the ITU and Tax Offices deal with international taxation, including domestic rules enacted on this matter. The comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges facing the TPD and ITU. *See* sections 2.4.1., 2.4.4., 2.5.1. and 2.5.4. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

The TPD and ITU's officers seem to have sufficient expertise to design, evaluate and/or apply the measures resulting from the recommendations, which are adopted by domestic legislation. The Direct Taxes Section and the ITU's senior officers have sufficient knowledge concerning the taxation of outbound payments in general and, specifically, payment of service charges, management and technical fees.

Detailed table of recommendations

© 2024 IBFD

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Base-Eroding Payments (UN Tax Handbook): **(i)** Uganda to implement its strategy as stated in the DRSM (*see* (ii)). **(ii)** Uganda to (re)negotiate the relevant tax treaties to preserve its taxing rights. **(iii)** Future strategy plans to monitor and evaluate the implementation of strategy treaty renegotiation. **(iv)** Future strategy plans to follow the progress made in effectively addressing this BEPS issue based on relevant data.	**(a)** TPD to (re)negotiate the relevant tax treaties (in which its domestic taxing rights have not yet been preserved) considering the priority to be given to these provisions in its tax treaty policy and strategy documents. **(b)** TPD to monitor and evaluate **(a)** in future DRSM. **(c)** URA to collect data on collection of taxes on outbound payments and revenue lost in tax treaty relationships that do not contain the relevant provisions to preserve its taxing rights. **(d)** URA to report data collected based on (c) above to the TPD to evaluate BEPS issue and prioritize accordingly.	*See* 3.3.4. concerning data collection. *See* 3.2.2.2. concerning tax treaties capacity building, particularly (2), (3), (4) and (5).

3.3.9. Tax challenges of the digital economy: OECD/G20 BEPS Action 1 recommendations relating to VAT measures; UN Tax Handbook recommendations relating to direct tax measures, other indirect tax measures and tax treaty measures allowing source taxation of non-resident digital services

Strategy

Under the DRMS 2019/20-2023/24, addressing the challenges of the digitalized economy is a priority for Uganda and part of its strategy. The DRMS states, for instance, that it is a priority for Uganda to review its domestic tax laws to better address the challenges of the digitalized economy. In particular, it is also a priority to address the problem of VAT collection in case of B2C transactions (i.e. provision of digital services to individual customers by non-resident suppliers). The country has acted on the topic and recently implemented a tax on non-residents providing digital services through an amendment to the ITA. For details, *see* sections 2.2.1., 2.2.5 and 2.2.6.

Adoption of measures

VAT

The country has fully adopted the recommendations for the collection of VAT as the “destination country” in B2B transactions (reverse charge method).

The country has implemented relevant measures for the collection of VAT in B2C transactions but this has not been fully successful. The collection method via simplified registration for the online sale of goods to customers in Uganda is not fully implemented in practice due to the lack of compliance, so it is not really fully effective (*see* section 2.3.2.12.).

© 2024 IBFD

Therefore, it is suggested that the country assesses the available options to make the collection of VAT in B2C transactions more effective. Examples of measures followed by other countries, which may be considered, are:

- options for enforcing registration by non-resident companies (such as, for example, the temporary suspension of the access to Internet connectivity in Mexico for non-resident digital services providers that fail to meet compliance obligations);
- use of financial intermediary-led withholding regimes as an alternative to collection obligations for non-resident suppliers;
- making digital platforms liable for the VAT on supplies that non-resident online suppliers make through these platforms; and
- further enhancing compliance by imposing information reporting requirements upon digital platforms.

Concerning VAT on imports of low-value goods, Uganda's existing exemptions (meant for travelers) are as such not targeted by OECD/G20 BEPS Action 1 (*see* section 2.3.2.12.). However, the tax authorities do not seem to be aware of the recommendations concerning imports of low-value goods, which recommendations are meant to avoid abuse. Therefore, it is suggested that the relevant tax authorities create awareness and knowledge of this possible abuse by analyzing the OECD/G20 BEPS Action 1 recommendations.

Direct tax measures

The country has adopted unilateral domestic legislation, i.e. a final 5% income tax levied on gross income derived by non-residents providing digital services to customers in Uganda, which has recently been approved by parliament (*see* section 2.3.2.13.).

It is suggested that the country analyzes the interaction of the adopted tax with the tax treaties concluded by Uganda and assesses whether these treaties prevent the levy of such a tax. The reason for this suggestion is that treaty partners may argue that such tax has the nature of an income tax falling within the scope of article 2 of tax treaties since it was implemented through the insertion of an article in the ITA. If that is the case, levying that tax in practice could be prevented by these tax treaties depending on the allocation of taxing rights for service/digital service fees in the specific treaty. Uganda may argue that such tax is, from a material/content perspective, a digital service tax falling outside the scope of tax treaties or, alternatively, amend tax treaties to allows source taxation of service/digital service fees.

In the context of a broader evaluation of the digitalized economy, Uganda should assess the effectiveness of the recently implemented tax and assess whether this solution is convenient for the country, or if other solutions should be followed instead. This may require the assessment of other options to address the challenges of the digitalized economy (e.g. withholding taxes, digital services taxes, significant economic presence) and the assessment (and follow-up) of the current global solution proposal (i.e. Pillar One). This global solution has made further progress as can be seen from an output statement of 12 July 2023, which contains among others a moratorium for IF members to introduce new DST or similar measures.

Treaty measures

There is a country position on including tax treaty provisions allowing the source taxation of digital services. As regards treaty provisions dealing with source taxation of services, it can be pointed at article 12A introduced by the 2017 UN Model, which covers fees for technical services that can be either provided in

© 2024 IBFD

person or digitally or article 12B introduced in the 2021 UN Model, which particularly deals with automated digital services.

Uganda has not (yet) adopted such provisions in any of its tax treaties in force (*see* section 2.3.2.14). If the country wants to continue negotiating the inclusion of such treaty provisions, it is good to realize that agreeing these provisions (especially article 12B) has become more difficult for countries that consider that Pillar One is the right solution for the digitalized economy.

Tax authorities' organization and staff expertise

Within MOFPED's TPD, the Direct Taxes and Indirect Taxes Sections are the departments responsible for formulating the international tax policy including domestic rules and tax treaty rules to deal with the digitalization of the economy. Within URA, the ITU and Tax Offices deal with international taxation, including VAT levied on cross-border transactions. The comments below relate only to the TPD and ITU.

See section 3.2.2.2. for a general description of the challenges facing the TPD and ITU. *See* sections 2.4.4., 2.4.8., 2.4.9., 2.5.4., 2.5.8. and 2.5.9. for further information. *See* section 3.4. concerning General Suggestions for Capacity Building including Retention Policy.

It is suggested that the tax authorities provide training to the junior staff of the TPD and ITU on the tax challenges of the digitalization of the economy, including unilateral measures, Pillar One and Uganda's recently implemented unilateral measure and measures in effect (VAT).

Particularly, regarding VAT measures and collection challenges, it is suggested that URA provide training to the staff of the ITU on key aspects of OECD/G20 BEPS Action 1 recommendations and further work done by the OECD on the implementation of these measures.

Detailed table of recommendations

Possible Measures	Possible Actions	Possible Training Needs and Assistance
Digitalization of the Economy (OECD/G20 BEPS Action 1 and UN Tax Handbook Recommendations): **(1)** Tax authorities to conduct an overall assessment of the effects of the digital economy as stated in its strategy. **(2)** Tax authorities to effectively implement and evaluate the effectiveness of measures already taken, i.e. VAT measures, by overcoming specific issues already detected. **(3)** Tax authorities to assess the effectiveness of the new tax on non-residents providing digital service, including whether they will be able to levy such tax also in a tax treaty context	**(a)** TPD to conduct overall assessment of the effects of the digital economy on the Uganda tax system and evaluate whether external consultancy is appropriate for this. **(b)** ITU to evaluate alternative collection methods for VAT on e-commerce – B2C. **c)** TPD in consultation with ITU to evaluate the effectiveness of the tax on non-residents providing digital service implemented and their interaction with tax treaties in force. **(d)** TPD in consultation with ITU to evaluate, as an alternative to the tax on non-residents providing digital service implemented, whether OECD/G20 Pillar One would be more beneficial for Uganda.	**(1)** Capacity building assistance for making an informed decision on whether to address digital economy through the implemented tax on non-residents providing digital service or if through Pillar One - Training on Pillar One, available alternative measures to tax digital services and their interaction with tax treaties. **(2)** Capacity building to create awareness on VAT collection methods for e-commerce (B2C) used by other countries and the work of the OECD on this specific issue.

© 2024 IBFD

(and if not, what action should be taken – use arguments supporting it as a digital service tax or adjust tax treaties). **(4)** Tax authorities to follow the work done in the Inclusive Framework on the Two-Pillar Solution (Pillar One), to be able to respond to these developments as soon as possible. **(5)** Tax authorities to make an assessment and decide how to address (direct) taxation of non-residents providing digital services to customers in Uganda (if through the recently implemented tax on non-residents providing digital services or through Pillar One) and follow-up with implementation if necessary.		**(3)** Training on OECD/G20 BEPS Action 1 recommendation concerning VAT on imports of low-value goods and on VAT collection methods for e-commerce. **(4)** Training on the OECD/G20 Pillar One to decide if it is beneficial for Uganda. *See* also Sections 3.2.2.2. and 3.3.2. concerning tax treaty capacity building.

© 2024 IBFD

3.4. General suggestions for capacity building including retention policy

URA has operational units in charge of international taxation matters, i.e. the ITU and Tax Offices. In MOFPED, the TPD Direct Taxes Section is the department responsible for formulating the tax policy including international tax policy. These units are staffed by officials with an academic background, including postgraduate and/or professional education. These officers also follow generally training on international taxation (including also from the OECD and the UN) but mostly develop expertise working on the job. Most senior staff are highly specialized and carry on very technical and complex work, which may also involve substantial amounts of revenue. This work is also fundamental for the country's revenue mobilization and may thus also contribute to generating a substantial amount of revenue.

In terms of challenges, we consider that there are two main interlinked issues: adequate staffing and retention policy.

General considerations and suggestions concerning adequate staffing

The TPD, in particular, the Direct Taxes Section, does not seem to have enough officers to properly carry out all assigned responsibilities in the ever-increasing international complexities. The ITU would have in principle sufficient officers to carry out its responsibilities if all of them were fully trained and experienced, however, more than a third of ITU staff are new URA recruits who still need further training and gaining of experience.

Indeed, the number of senior members with the required expertise is limited in both the TPD Direct Taxes Section and the ITU (five or fewer officers in total) and there seems to be a substantial gap between most senior members and other members, particularly junior officers and new recruits.

The TPD and IT staff have had access to short-term training over the years from their institutions and also short-term training from various organizations, this training having taken various formats and duration; however, this training is not regular and consistent to keep up to date with international tax developments.

We suggest that MOFPED and URA evaluate: (i) the number of officers and their level of expertise that would be appropriate for these units to be able to carry on successfully their assigned responsibilities; (ii) the need to have officers adequately specialized in specific matters (e.g. tax treaty negotiation, transfer pricing and taxation of digital services); and (iii) the level of initial education for less experienced officers in these departments and permanent education for officers to stay up to date in order to be able satisfactorily carry out their duties. Based on the outcome of such evaluation, a plan may be created to address any needs in this respect.

General considerations and suggestions concerning adequate retention policy

In both the Direct Taxes Section and ITU, there seems to be a high turnover of staff, which requires continuous investment in training new officers to be able to properly carry out the responsibilities assigned.

MOFPED and URA would benefit from having a clear vision and defined strategy concerning recruitment, training and retention of qualified officers for the important responsibilities assigned to the TPD and ITU.

We suggest that MOFPED and URA consider a retention policy for highly specialized staff, in general, including officers of the TPD and ITU. Such a policy could consider measures, such as: (i) improving a

© 2024 IBFD

career prospect in terms of recognition of seniority (for instance by distinguishing the relevant levels of experience in junior, manager and principal positions) linked to a remuneration policy recognizing the various level of seniority; (ii) reviewing the rotation policy within the TPD in order to efficiently use the particular expertise of its staff; and (iii) providing specialized training which can also promote job satisfaction.

(i) Career prospect linked to remuneration policy

The current organizational structure allows limited opportunity for the promotion of staff (for example, due to the fact that formally only one principal officer has been assigned to a unit, a senior officer can only be promoted if the principal officer of that unit is promoted or leaves the service). Both MOFPED and URA would benefit from designing an attractive career prospect, i.e. promotion based on expertise and achievements, that recognizes the important responsibilities of these units and the various roles within them.

Remuneration should also correspond to roles, responsibilities, experience and seniority. The lack of this may discourage officers to perform more complex work. For example, revenue targets may be generally set on an annual basis. However, complex audits, such as audits of MNEs, may take longer than year. As a result, it would be more difficult for the ITU to meet its targets. To be able to achieve the unit's targets, the ITU's officers would need to be highly efficient when dealing with complex matters. On the other hand, ITU officers may have the same remuneration structure as all the officers of URA. This may discourage other experienced URA officers from willingly applying for the ITU positions, as they would be required to do more complex and time pressing work for the same remuneration.

(ii) The TPD staff expertise may also not be effectively applied in practice

Due to MOFPED's rotation policy, highly specialized officers may be working in other TPD sections that do not deal with matters corresponding to these officers' expertise. This eventually jeopardizes efforts in training staff and may render the knowledge gained by staff ineffective. The actual use of expertise gained where it is effectively needed is essential to gain the benefits of capacity building that has taken place.

(iii) Providing specialized training which can also promote job satisfaction

Providing access to further specialized training or education, such as, summer courses or Master's programmes at universities and/or, for practical expertise, providing secondment of staff to work in other tax administrations or organizations may both develop the internal expertise and promote job satisfaction as "benefits in kind".

General suggestions concerning initial training and permanent education

In line with the third National Development Plan (NDPIII), which states the provision, inter alia, of better training and resources to URA to foster higher compliance, we recommend investing both in the operational training of existing (junior) staff in what are for them new specialized areas, and also to invest in a higher specialized academic knowledge on international taxation for staff that have a couple of years of work experience and a bond with URA, by having a number of selected staff participate in specialized postgraduate Master's programmes in international tax law.

In order to consolidate and strengthen knowledge and promote interaction among international tax specialists within the tax authorities, consideration may be given to introducing a train-the-trainer approach

© 2024 IBFD

within the URA tax academy for those who have been adequately trained, which above mentioned education programmes may also be made available to TPD staff.

© 2024 IBFD

3.5. Summary of possible measures, actions and training needs and/or other assistance

Table 2 provides a summary of possible measures concerning base erosion and profit shifting, possible actions to be undertaken to implement these measures, and possible training needs and/or other assistance.

Table 2. Summary of possible measures, actions and training needs and/or other assistance

Possible Measures	Possible Actions	Possible capacity-building needs and assistance
Section 3.1. **Country Strategy on International Tax Avoidance:** **(i)** Tax authorities to periodically evaluate the progress made in implementing the strategy plans, including the progress in tackling identified issues and the effectiveness of the implemented measures, and to make these reports publicly available. **(ii)** Tax authorities to implement their strategy plans by establishing formalized procedures for developing the country's more specific tax policy.	**a)** TPD to adopt procedures to monitor progress made in implementing the strategy plans, including the URA feedback in tackling identified issues and the effectiveness of measures. TPD to include such progress evaluations in following strategy plans. **(b)** TPD to implement DRSM by establishing formalized procedures for developing the country's more specific tax policy considering a well-structured consultation process for input from all relevant stakeholders. **(c)** TPD to evaluate whether capacity building is necessary to carry out (a) and (b).	N/A
IF and implementation of the BEPS Minimum Standards		
Section 3.2.2.1: **Harmful Tax Practices and Exchange of Rulings (OECD/G20 BEPS Action 5):** **(i)** Uganda tax authorities - to fully analyze the BEPS Action 5 Minimum Standard, both harmful preferential tax regimes and EOI of tax rulings; - to state in the DRMS their strategy concerning these; and - to monitor and evaluate such strategy. **(ii)** Measures on preferential tax regimes:	**(a)** If Uganda considers joining the IF: TPD to analyze the OECD/G20 BEPS Action 5 ToR for Peer Review concerning harmful tax rulings and then to review existing preferential tax regimes. **(b)** TPD to take initiate to propose EAC meetings to discuss harmful tax competition among EAC members to the aim to have a common understanding and a common policy. **(c)** If Uganda considers implementing new preferential tax regimes: TPD to analyze substantial activity requirement under OECD/G20 BEPS Action 5 and the recommendations of the PCT toolkit. **(d)** TPD and URA to discuss and analyze the benefits and suitability of EOI on tax rulings to the country, especially in respect of receiving	**(1)** Specific workshop for TPD about harmful tax competition, particularly harmful features, in order to enabling a review of Uganda preferential tax regimes (when necessary). **(2)** EAC meeting with key tax policy makers of member countries to discuss harmful (regional) tax competition with the aim to have a common understanding about this problem and then ideally a common tax policy. **(3)** Specific training for ITU and EOI unit on EOI on tax

© 2024 IBFD

- if Uganda wishes to join the IF, to fully analyze whether Uganda preferential tax regimes have harmful features; - to initiate discussions about harmful tax competition with neighbouring countries in a EAC context; and - to carefully consider design of potential financial centres and other regimes based on BEPS Minimum Standard and international best practices. **(iii)** Measures on EOI of tax rulings: - evaluate whether to adopt EOI on tax rulings, particularly, whether this is in practice possible if Uganda is not an IF member; - follow-up with an implementation plan if so decided; and - decide whether to make tax rulings public to ensure transparency and follow-up its implementation if so decided.	information from other countries. Once a decision is made, follow up its implementation if it is the case. **(e)** In case the country decides on EOI of tax rulings, make a full evaluation of all requirements and start implementing those necessary elements: - URA to identify, prepare, and make possible to exchange information on tax rulings; and - to make operational to keep statistics on EOI in respect of tax rulings by specifically instructing the EOI Unit. **(f)** Discuss and analyze the benefits of making tax rulings public. Once a decision is made, follow up its implementation if it is the case.	rulings, its possible benefits for the country and the OECD/G20 BEPS Action 5 requirements for such exchange.
Section 3.2.2.2: **Preventing Tax Treaty Abuse (OECD/G20 BEPS Action 6):** **(i)** To Implement DRMS strategy concerning tax treaties: - refraining from new negotiations unless necessary; - conducting cost-benefit analysis; - clearly stating the country tax treaty policy by: - having an official Uganda Model Convention available to all relevant stakeholders, and - setting (re)negotiation priorities for treaties in force and negotiations with other countries. **(ii)** to align the provisions of the Uganda Model Convention with those of the EAC Model Convention.	**(a)** To enforce existing DRMS tax treaty policy: refraining from entering into new tax treaties unless it is necessary. **(b)** TPD to conduct cost-benefit analysis for tax treaties in general and for existing tax treaties in particular. If convenient, assign this study to external consultant(s). Use this analysis to input the follow-up strategy. **(c)** To prioritize treaty (re)negotiations in view of investment flows and treaty-shopping risks. **(d)** TPD to review, in consultation with ITU, the Uganda Model Convention, with the aim to have an official country model approved by Cabinet. In particular, TPD to align this model with the EAC Model Convention considering the DRM4D (amended) Ugandan Model Convention. If convenient, assign this study to external consultant(s). Use this analysis to input the follow-up strategy. **(e)** To continue the endeavor to incorporate OECD/G20 BEPS Action 6 Minimum Standard in tax treaties in force and new tax treaties. **(f)** When adopted, apply anti-abuse treaty provisions effectively. **(g)** To further build the expertise of the staff involved in tax treaty (re)negotiations.	**(1)** Training for junior staff of TPD and ITU on fundamentals of tax treaties, considering in particular tax treaties in force and treaty abuse, and including treaty shopping and Action 6 Minimum Standards. **(2)** Advanced training on the OECD/G20 BEPS Action 6 Minimum Standards, particularly, practical application of anti-abuse provisions aiming to evaluate whether to adopt the PPT rule, the LOB rule or both. **(3)** Advanced workshop on tax treaty negotiations at EAC level using the EAC Model Convention.

© 2024 IBFD

	(h) To further build the expertise of the staff involved in tax treaty application and interpretation concerning anti-abuse rules.	
Section 3.2.2.3: **CbC Reporting (OECD/G20 BEPS Action 13):** **(i)** Implementing DRSM strategy by taking concrete steps: - TPD and ITU to analyze the OECD/G20 BEPS Action 13 Minimum Standard requirements and the situation of Uganda in respect of these; particularly whether this is practical if Uganda is not an IF member; and - TPD, in consultation with ITU, to evaluate and make a specific plan for implementing CbC reporting. **(ii)** Based on (i): - to adopt model domestic legal and administrative framework for CbC Reporting; and - to ratify the Convention on Mutual Administrative Assistance in Tax Matters. **(iii)** In due time, use effectively CbC reports received.	**(a)** TPD and ITU to analyze the OECD/G20 BEPS Action 13 ToR for Peer Review and then evaluate requirements that need to be met to implement CbC reporting and then be able to receive reports. **(b)** TPD and ITU to make a plan for adopting necessary requirements legislative, administrative and IT requirements based on model OECD/G20 BEPS Action 13 framework for this. **(c)** TPD to take steps for Uganda to ratify the Convention on Mutual Administrative Assistance in Tax Matters. **(d)** ITU to evaluate how CbC report may be used for risk assessments and plan necessary measures for this.	**(1)** Specific workshop with key officers of TPD and ITU on OECD/G20 BEPS Action 13 Minimum Standard requirements and ToR for Peer Review with the aim to evaluate measures to be adopted and make a specific implementation plan. **(2)** Training for junior staff of TPD and ITU on fundamentals of transfer pricing including OECD/G20 BEPS Action 13 Minimum Standard. **(3)** Specific advanced training for key officers of TPD and ITU on OECD/G20 BEPS Action 13 Minimum Standard requirements, their implementation and effective use.
Section 3.2.2.4: **Effective Tax Treaty Dispute Resolution (OECD/G20 BEPS Action 14):** **(i)** Tax authorities to analyze OECD/G20 BEPS Action 14 Minimum Standard, specifically, what Uganda would need to fulfil it besides tax treaty provisions, i.e., domestic legislation and administrative framework and practical implementation of MAP. **(ii)** Tax authorities to state in strategy documents, including tax treaty policy, the priority to be given to tax treaty dispute resolution. **(iii)** Based on **(ii),** tax authorities to define in the tax treaty policy the relevance to be given to these provisions in its bilateral (re)negotiations and multilateral renegotiation in the context of the	**(a)** TPD and ITU to analyze OECD/G20 BEPS Action 14 Minimum Standard, its relevance for Uganda and then state its priority in the DRSM. **(b)** Based on (a), if necessary, URA to evaluate the costs of implementing this standard and make a plan for it. **(c)** Meanwhile (a) and (b) are completed, URA to make MAP effectively available for taxpayers by providing in its website the procedure and documentation to request MAP. **(d)** Tax authorities to (re)negotiate tax treaties incorporating Art. 25, paras (1), (2) and (3) of the EAC model and proposed DRM4D (amended) Uganda Model Convention.	**(1)** Practical workshop for key officials of TPD and ITU on Action 14 Minimum Standard and its 21 elements, work of OECD with other countries to implement such standard, and possible feasible implementation by Uganda. **(2)** Training for junior staff of TPD and ITU generally about tax treaties and specifically about tax treaty dispute resolution.

© 2024 IBFD

EAC and then (re)negotiate treaties following such policy. **(iv) Uganda t**ax authorities to implement strategy and monitor this.		
Measures regarding BEPS issues, other than the BEPS Minimum Standards		
Section 3.3.1: **Base Erosion Involving Interest Deductions (OECD/G20 BEPS Action 4):** **(i)** Future strategy documents to specify the need to monitor the BEPS issue and then assess the effectiveness of the EBITDA-based rule by: - monitoring relevant data; and - considering issues detected by URA. **(ii)** Decide whether to introduce changes based on the evaluation of the effectiveness of the EBITDA-based rule (*see* Possible Actions).	**(a)** MOFPED/URA to introduce formal internal procedures to assess the effectiveness of the EBITDA. **(b)** Evaluate possible changes to the EBITDA-based rule, in particular: **(b.1)** whether to restrict deductibility of net interest instead of gross interest to avoid potential double taxation. **(b.2)** whether an EBIT-based threshold may be more suitable to measure taxable earnings. **(b.3)** whether the rules applicable to rental income effectively address excessive borrowing or lead to unintended differential treatments instead. **(c)** Evaluate whether the other best practices recommended by OECD/G20 BEPS Action 4 may be adopted	**(1)** Specific workshop for key officials from URA and MOPFED with the aim to study best practices recommended by OECD/G20 BEPS Action 4, evaluate issues relating to the application by ITU of EBITDA-based rule and potential amendments, including drafting possible amendments. **(2)** Training for junior staff of TPD and ITU, generally, about international taxation and, specifically, about the application of the EBITDA-based rule
Section 3.3.2: **Tax Treaty Abuse (OECD/G20 BEPS Action 6) and Artificial Avoidance of PE Status (OECD/G20 BEPS Action 7):** **i)** Review tax treaty policy and align the Uganda Model Convention with the EAC Treaty Model. Evaluate level of priority of these provisions when (re)negotiating tax treaties. **(ii)** Adopt OECD/G20 BEPS Actions 6 and 7 recommendations in tax treaties in force and new tax treaties according to the country models. Evaluate the outcome of (re)negotiations and consider possible measures to successfully (re)negotiate them. **(iii)** When adopted in tax treaties, apply anti-abuse treaty provisions effectively.	**(a)** TPD to review tax treaty policy to align the Uganda Model Convention and the EAC Treaty Model. TPD in consultation with URA to evaluate level of priority of these provisions when (re) negotiating tax treaties. **(b)** MOFPED to (re)negotiate tax treaties adopting these provisions considering their level of priority. Evaluate outcome of (re)negotiations and adjust negotiations as necessary. **(c)** Further strengthen the expertise of the staff involved in tax treaty negotiations **(d)** Further strengthen the expertise of the staff involved in interpretation and application of tax treaties to apply anti-abuse treaty provisions effectively.	**(1)** Training for junior staff of TPD and ITU on fundamentals of tax treaties, considering in particular tax treaties in force and treaty abuse, and including treaty shopping and Actions 6 and 7 recommendations. **(2)** Advanced training for ITU on interpretation and application of tax treaties, including specifically OECD/G20 BEPS Actions 6 (not Minimum Standards) and 7, PEs and attribution of profits to PEs. See also Section 3.2.2.2, number (3).
Sections 3.3.3:		**(1)** Workshop for ITU key officials on the practical implementation of OECD/G20

© 2024 IBFD

Transfer Pricing (OECD/G20 BEPS Actions 8-10 and Action 13; and PCT Toolkit Recommendations): **(i)** Uganda tax authorities to implement TPG documentation requirements: Master File and Local File. **(ii)** Uganda tax authorities to evaluate the different proposals of the PCT toolkit to deal with the lack of comparables. **(iii)** Uganda tax authorities to assess the application of the bank secrecy to requests of information from URA. **(iv)** Uganda tax authorities to evaluate possible measures to improve the EOI with other countries. **(v)** Uganda tax authorities to evaluate introducing penalties in case of transfer pricing adjustments made by the URA. **(vi)** Uganda tax authorities to evaluate creating a TP unit within URA (dealing exclusively with TP matters). **(vii)** Uganda tax authorities, in due time, to evaluate the effectiveness of these rules to deal with the BEPS issue.	**(a)** URA to require taxpayers to file the Master File and Local File as provided by the TPG, establishing appropriate penalties in case of failure of submitting such information. **(b)** ITU to carefully evaluate, based on experiences accumulated, the different proposals of the PCT toolkit to deal with the lack of comparables. and to discuss with TPD possible steps to further deal with this issue. **(c)** TPD and ITU to discuss with the financial institutions regulator and other relevant government stakeholders the access by URA to financial institutions information for tax purposes i.e. the application of the bank secrecy to tax matters; and, if necessary, to evaluate possible legislation amendments to overcome limitations. **(d)** TPD and ITU to consider bilateral dialogue with specific country(ies) to improve the EOI. **(e)** TPD and ITU to evaluate introducing penalties in case of transfer pricing adjustments made by URA, and, if consider adequate, implement this by introducing legislative amendments and/or administrative regulations. **(f)** URA to carry out a cost-benefit analysis of the organizational separation of the ITU in two units: TP unit and international taxation unit, considering particularly staffing, reporting structure and budgetary needs. **(g)** TPD and ITU to monitor issues related to these rules to deal with the BEPS issue (to avoid abuse of TP).	BEPS Action 13 Master File and Local File. **(2)** Workshop with key officials of the TPD and ITU on the different measures to deal with the lack of comparables, the PCT toolkit recommendations, with the aim on evaluating possible measures feasible for Uganda to better deal with this issue. **(3)** ITU to further look for specific assistance by external consultants to address challenges in the application of its TP legislation. **(4)** General training for ITU junior staff on the practical application of OECD TPG by URA. **(5)** ITU to further work with ATAF including also for making effective use of ATAF database.
Section 3.3.4: **Measuring and Monitoring BEPS (OECD/G20 BEPS Action 11):** **(i)** Tax authorities to state in their strategy documents the priority to be given to start measuring and monitoring BEPS and BEPS countermeasures, and the need to evaluate the implementation of such strategy. **(ii)** For (i), analyze the benefits of measuring and monitoring BEPS, as well as (1) the availability of information; (2) the feasibility of measures to obtain unavailable information; and (3) the resources necessary to obtain and process information that is not yet available.	**(a)** TPD and ITU to analyze the relevance of measuring and monitoring BEPS. **(b)** TPD and ITU to analyze OECD/G20 BEPS Action 11 recommendations. **(c)** MOFPED and URA to decide on the priority to be given to measuring and monitoring BEPS according to the countries' strategy documents. **(d)** Based on (c), TPD and ITU to make an implementation plan to start measuring and monitoring BEPS, including: - coordinating their work; - instructing relevant units; and - determining which data is relevant to collect; - determining necessary resources, including necessary staff and IT infrastructure.	**(1)** General training on OECD/G20 BEPS issues. **(2)** Specific training on the recommendations of OECD/G20 BEPS Action 11 and on the work done by OECD since 2015, ATAF and other countries. **(3)** Practical training on BEPS measurement and monitoring

© 2024 IBFD

(iii) Tax authorities: (1) to analyze OECD/G20 BEPS Action 11 recommendations; (2) to make an implementation plan to start measuring and monitoring BEPS; and (3) if so decided, Uganda may consider working together with the OECD on this as suggested in the Action point, and/or also with other regional organizations		
Section 3.3.5: **Signing the MLI:** **(i)** Take an informed decision on whether to sign (or not) the MLI. **(ii)** Proceed with making the various choices required if Uganda decides to sign the MLI	**(a**) Analyze the policy considerations supporting the decision to sign (or not) the MLI and assess the required (staff) resources and possible time frame for its application. **(b)** if Uganda decides to sign the MLI, tax authorities to evaluate which treaties to cover and which options to choose, taking into account the country tax treaty network and policy, and the position of/relation with treaty partners (whether they signed the MLI and what choices they made).	**(1)** Specific workshop aiming at weighting the policy considerations for signing the MLI, analyzing inter alia these considerations, MLI content (anti-avoidance rules), procedural rules and necessary choices for signing (list of reservations and notifications), and positions of treaty partners. **(2)** For (1), technical assistance in assessing the positions of Ugandan treaty partners that have signed the MLI.

Section 3.3.6:
 	
Use of Tax Incentives (PCT Toolkit Recommendations):
 	
(i) Tax authorities to evaluate tax incentives for investment based on cost-benefit analysis.
 	
(ii) Tax authorities to review usefulness of tax holidays.
 	
(iii) Tax authorities to follow the work done in the IF on Pillar Two and to evaluate the potential impact on tax incentives for investment.
 	
(iii) Tax authorities to review tax exemptions granted by MOFPED on a discretionary basis.
	(a) TPD to design overall evaluation of tax incentives for investment of Uganda considering specifically:
	- tax expenditure per incentive; and
	- impact of each incentive on investment.
	
	(b) TPD to review the tax incentives report prepared within the DRM4D project and to evaluate its recommendations.
	
	(c) TPD to review tax holidays, considering whether they can be replaced by cost-based incentives:
	- evaluate, on the basis of their concrete impact on investment, whether to maintain them;
	- if decided to maintain them:
	  - make them temporarily available; and
	  - clarify on publicly available resources the exact procedure that taxpayers should follow to benefit from the tax holidays; and
	  - verify the correct functioning of their automatic applications.
	
	(d) TPD to study the OECD/IF Pillar Two and, in particular, whether Uganda tax incentives for investment will result in additional taxation in another country and, if that is the case, potential measures to be adopted by Uganda to levy such tax.
		(1) Training for key officials of TPD and URA on the recommendations of the PCT toolkit for effective and efficient tax incentives for investment.
		
		(2) Specific training for TPD and URA (Research and Innovation Unit) on how to measure the tax expenditure and also the impact incentives for investments.
		
		(3) Training on OECD/IF Pillar Two, and the potential impact on the domestic tax system.
		
		(4) For (3)**,** technical assistance on the potential impact of Pillar Two on Uganda tax incentives.

© 2024 IBFD

	(e) TPD to evaluate tax exemptions granted by MOFPED on a discretionary basis including their tax expenditure and benefit(s). **(f)** URA to collect the data necessary for TPD above actions.	
Section 3.3.7: **Offshore Indirect Transfer of Assets Located in Uganda (UN Tax Handbook):** **(i)** Strategy: Uganda tax authorities to state in the DRMS the relevance of the BEPS issue of offshore indirect transfer of assets located in Uganda, the need to evaluate the application of the domestic legislation and tax treaty provisions to secure those taxing rights, and make amendments as necessary. The DRSM to monitor and evaluate implementation of strategy and progress made in effectively addressing this BEPS issue. **(ii)** URA to further analyze implementation of similar domestic legislation by other countries in order to adopt measures to overcome challenges in implementation of domestic legislation: - detection of offshore transfers; - tax computation; and - tax collection **(iii)** Uganda to evaluate relevance of tax treaty provisions and then (re)negotiates tax treaties including the treaty-related measures, i.e. article 13(4) of the 2017 OECD Model and of the 2021 UN Model, and articles 13 (7) the 2021 UN Model.	**a)** TPD to evaluate relevance and then include in the DRMS the offshore Indirect transfer of assets located in Uganda: - the need to evaluate the application of the domestic legislation in consultation with the ITU; and - the need to have tax treaty provisions to secure those taxing rights. **(b)** TPD to monitor and evaluate implementation of strategy stated in **(a)**. **(c)** URA to make inventory of issues concerning application of domestic legislation and possible necessary amendments and discuss this in ad-hoc meeting(s) with the TPD. **(d)** TPD to evaluate relevance of tax treaty provisions (i.e. Articles 1 (3) and 13 (4) of the OECD and UN Models and Article 13 (7) of the 2021 UN Model) and their interaction with the existing domestic law. TPD to review, if necessary, the Uganda Model Convention to include relevant treaty-related measures. **(e)** TPD to (re)negotiate tax treaties considering the priority to be given to the provisions stated in (d) and, if necessary, amend domestic law.	**(1)** ITU and TPD to work jointly with external consultants to further analyze implementation of domestic legislation about offshore indirect transfer of assets with the aim to have concrete alternatives for its refinement: - application issues; and - approach by other countries to these issues. **(2)** ITU and TPD to participate in workshop with tax officials of countries of the region to discuss practical issues of domestic legislation about offshore indirect transfer of assets. **(3)** Specific training for junior staff of TPD and ITU dealing with domestic legislation about offshore indirect transfer of assets and relevance of tax treaty provisions. Concerning tax treaty capacity building, *see* Section 3.2.2.2. above
Section 3.3.8: **Base-Eroding Payments (UN Tax Handbook):** **(i)** Uganda to implement its strategy as stated in the DRSM (*see* (ii)). **(ii)** Uganda to (re)negotiate all tax treaties preserving its taxing rights.	**(a)** TPD to (re)negotiate the relevant tax treaties (in which its domestic taxing rights have not yet been preserved) considering the priority to be given to these provisions in its tax treaty policy and strategy documents. **(b)** The TPD to monitor and evaluate **(a)** in future DRSM. **(c)** URA to collect data on collection of taxes on outbound payments and revenue lost in tax treaty	*See* 3.3.4. concerning data collection. *See* 3.2.2.2. concerning tax treaties capacity building, particularly (2), (3), (4) and (5).

© 2024 IBFD

(iii) Future strategy plans to monitor and evaluate the implementation of strategy treaty renegotiation. **(iv)** Future strategy plans to follow the progress made in effectively addressing this BEPS issue based on relevant data	relationships that do not contain the relevant provisions to preserve its taxing rights. **(d)** URA to report data collected based on (c) above to the TPD to evaluate BEPS issue and prioritize accordingly.	
Section 3.3.9: **Digitalization of the Economy OECD/G20 BEPS Action 1 recommendations relating to VAT measures; UN Tax Handbook recommendations relating to direct tax measures, other indirect tax measures and tax treaty measures allowing source taxation of non-resident digital services** **(1)** Tax authorities to conduct an overall assessment of the effects of the digital economy as stated in its strategy. **(2)** Tax authorities to effectively implement and evaluate the effectiveness of measures already taken, i.e. VAT measures, by overcoming specific issues already detected. **(3)** Tax authorities to assess the effectiveness of the new tax on non-residents providing digital service, including whether they will be able to levy such tax also in a tax treaty context (and if not, what action should be taken – use the arguments supporting it as a digital service tax or adjust tax treaties). **(4)** Tax authorities to follow the work done in the Inclusive Framework on the Two-Pillar Solution (Pillar One), to be able to respond to these developments as soon as possible. **(5)** Tax authorities to make an assessment and decide how to address (direct) taxation of non-residents providing digital services to customers in Uganda (if through the recently implemented tax on non-residents providing digital services or through Pillar One) and follow-up with implementation if necessary.	**(a)** TPD to conduct overall assessment of the effects of the digital economy on the Uganda tax system and evaluate whether external consultancy is appropriate for this. **(b)** ITU to evaluate alternative collection methods for VAT on e-commerce - B2C. **(c)** TPD in consultation with ITU to evaluate the effectiveness of the tax on non-residents providing digital service implemented and their interaction with tax treaties in force. **(d)** TPD in consultation with ITU to evaluate, as an alternative to the tax on non-residents providing digital service implemented, whether OECD/G20 Pillar One would be more beneficial for Uganda.	**(1)** Capacity building assistance for making an informed decision on whether to address digital economy through the implemented tax on non-residents providing digital service or if through Pillar One - Training on Pillar One, available alternative measures to tax digital services and their interaction with tax treaties. **(2)** Capacity building to create awareness on VAT collection methods for e-commerce (B2C) used by other countries and the work of the OECD on this specific issue. **(3)** Training on OECD/G20 BEPS Action 1 recommendation concerning VAT on imports of low-value goods and on VAT collection methods for e-commerce. **(4)** Training on the OECD/G20 Pillar One to decide if it is beneficial for Uganda. *See* also Sections 3.2.2.2. and 3.3.2. concerning tax treaty capacity building.

© 2024 IBFD

4. Possible Priority Setting Concerning BEPS that Could Be Considered by the Tax Authorities, Including Ongoing Measures

We suggest that the Uganda tax authorities consider the following priority setting concerning BEPS. This priority setting could be considered taking into account, where possible, an estimation of the cost of implementing such measures and their expected benefit (considering especially the expected additional revenue).

1. We identify as a major constraint the lack of data to measure and monitor base erosion and profit shifting issues. These data would be very important for the country to be able to determine which issues are most relevant in its particular situation and which countermeasures are most effective in context of domestic resource mobilization. Uganda seems to have the infrastructure in place to gather such relevant information, but it has not yet taken a formal decision on the matter (OECD/G20 BEPS Action 11 recommendations). Uganda may consider working together with the OECD on this as suggested in the Action point, and/or also with other regional organizations.

2. Given the fact that Uganda has so far not decided to become a member of the IF (which would entail a priority and obligation to implement the Minimum Standards) and given the lack of data to determine the extent and budgetary relevance of the various base erosion and profit shifting issues and measures to remedy them, we suggest that priority is seemingly best given to the effective implementation of measures on which progress has already been made and which could therefore provide positive budgetary results in the short and medium term. This thereby avoids efforts that have already made with regard to these measures being made in vain. Subsequently, work should begin on new measures that may also be very relevant for Uganda from the point of view of protecting the existing tax base and the broader domestic resource mobilization.

2.1. First, the BEPS issues with which Uganda has been confronted and for which countermeasures have already been started (which have also been identified by the international community as relevant issues):

> 2.1.1. Countering indirect transfer of assets located in the country: Effectively apply existing domestic rule by overcoming specific issues already detected. Evaluate the application of the rule in the context of tax treaties and relevance of specific tax treaty provisions to avoid possible disputes and secure the domestic taxing rights. In due time, evaluate the effectiveness of the rule to deal with the BEPS issue taking, for instance, into account the Platform for Collaboration on Tax Matters (PCT) toolkit and the provisions recently included in the 2021 UN Model Convention.
>
> 2.1.2. Countering abuse of base-eroding payments: Continue applying effectively existing provisions on withholding taxes on outbound payments (taking into account any tax treaty obligations) and limitation on interest deductibility (EBITDA-based rule). Consider possible amendments to the EBITDA rule and also the relevance to Uganda of the other recommendations of OECD/G20 BEPS Action 4. In due time, evaluate the effectiveness of these rules to deal with the BEPS issue.
>
> 2.1.3. Countering abuse of transfer pricing: Analyze whether all the necessary elements of OECD/G20 BEPS Actions 8-10 have been sufficiently evaluated and are effectively

© 2024 IBFD

implemented by URA, as provided by the domestic legislation. Carefully evaluate the recommendations of the PCT toolkit to address the difficulties related to the lack of comparables data in transfer pricing analyzes. Support existing efforts to continue gathering the necessary knowledge and experience at regional and international level to apply effectively these principles through audits (ensuring that MNEs comply with these new standards). In due time, evaluate the effectiveness of these rules to deal with the BEPS issue.

2.1.4. Protecting the domestic tax base against its progressive erosion by the digitalization of the economy: Effectively implement measures already taken, i.e. VAT measures, by overcoming specific issues already detected. Carefully assess the effectiveness of the recently implemented tax on non-residents providing digital services and whether they could be applied in the context of tax treaties and relevance of specific tax treaty provisions. Conduct an overall assessment of the effects of the digital economy. Follow the work done in the Inclusive Framework on the two-pillar solution, in order to be able to assess and compare the options available (implemented tax versus other unilateral measures versus Pillar One solution), as well as respond to these developments as soon as possible.

2.1.5. Countering abuse of tax treaties: Continue renegotiating tax treaties in force and implement strategy plans by refraining from entering into negotiations for new tax treaties until a cost-benefit analysis is carried out. Continue reviewing the Uganda Model Convention in light of the EAC Model Convention and proposed DRM4D (amended) Uganda Model Convention, considering carefully which priority to be given to OECD/G20 BEPS Actions 6 and 7 recommendations as included in the 2017 OECD and UN Model Conventions, and also other anti-abuse provisions contained in the 2021 UN Model Convention. (Re)negotiate tax treaties incorporating relevant anti-abuse provisions.

2.2. Subsequently, with regard to other relevant issues related to BEPS (which have also been identified by the international community as relevant issues):

2.2.1. Countering harmful tax competition: Initiate discussions about regional harmful tax competition with neighbouring countries in the EAC context with the concrete aim to have a common understanding among member countries about this problem and then ideally to establish a common tax policy to prevent such harmful competition by neighbouring countries.

2.2.2. Reviewing existing tax incentives based on the recommendations of the PCT toolkit on the effective and efficient use of investment incentives: Evaluate the impact of incentives, in particular, revenue-based incentives (e.g. tax holidays and tax exemptions that may be granted on a discretionary basis). Implement the strategy plans by continuing to develop a comprehensive tax expenditure framework. Evaluate tax incentives while taking into account the emerging implementation of the global minimum tax (Pillar Two).

2.2.3. Implementing CbC reporting: Implement country strategy by adopting model legislative, administrative and technological requirements of OECD/G20 BEPS Action 13 Minimum Standard in order to benefit from receiving CbC information from other countries in the context of transfer pricing; and effectively use this information for its transfer pricing risk assessments in order to be able to better target its auditing efforts.

© 2024 IBFD

2.2.4. Implementing EOI on tax rulings: If Uganda were to decide to implement OECD/G20 BEPS Action 5 Minimum Standard concerning EOI on tax rulings, based on a cost-benefit analysis, it would need to adopt legislative, administrative and technological requirements necessary to exchange relevant tax rulings and then to benefit from receiving relevant tax rulings from the tax authorities of other countries.

Table 3 provides, besides the already ongoing measures established in the Uganda tax authorities' strategy plans, a summary of the possible priority setting regarding the other measures discussed in this report that could be considered by the Uganda tax authorities.

Table 3. Summary of Possible Priority Setting including Ongoing Measures

1. Priority could be given to starting the adoption of recommendations for measuring and monitoring OECD/G20 BEPS issues and also other BEPS issues, which are considered relevant for Uganda.
2. Priority first to the issues on which Uganda has already started measures (which have also been identified by the international community as relevant issues):
2.1. Countering indirect transfer of assets located in the country: Effectively apply existing domestic rule. Evaluate the application of the rule in the context of tax treaties. Evaluate the effectiveness of the rule to deal with the BEPS issue.
2.2. Countering abuse of base-eroding payments: Continue effectively applying existing provisions on withholding taxes and the EBITDA-based rule. Consider amendments to the EBITDA rule. Evaluate other recommendations of OECD/G20 BEPS Action 4. Evaluate the effectiveness of these rules to deal with the BEPS issue.
2.3. Countering abuse of transfer pricing: Analyze whether the necessary elements of OECD/G20 BEPS Actions 8-10 have been effectively evaluated and implemented by URA, as provided by the domestic legislation. Evaluate the recommendations of the PCT toolkit to address the difficulties related to the lack of comparables data. Evaluate the effectiveness of these rules to deal with the BEPS issue.
2.4. Protecting the domestic tax base against its progressive erosion by the digitalizing economy: Effectively implement and evaluate the effectiveness of VAT measures taken. Carefully assess the effectiveness of the recently implemented tax on non-residents providing digital service and their possible application in relation to tax treaties. Conduct an overall assessment of the effects of the digital economy. Follow work done in the Inclusive Framework on the Two-Pillar Solution. Evaluate the effectiveness of rules taken to deal with the BEPS issue.
2.5. Countering abuse of tax treaties: Continue renegotiating tax treaties in force and implement strategy by refraining from new negotiations until a tax treaty cost-benefit analysis is carried out. Continue reviewing the Uganda Model Convention. (Re)negotiate tax treaties incorporating relevant anti-abuse provisions, and effectively apply these provisions. Evaluate effectiveness of rules to deal with the BEPS issue.
3. Subsequently, with regard to other BEPS issues (which have also been identified by the international community as relevant issues):
3.1. Countering harmful tax competition: Discuss regional harmful tax competition with neighboring countries in the EAC context to have a common understanding and then ideally to establish a common tax policy to prevent such harmful competition.
3.2. Reviewing existing tax incentives for investment: Evaluate the impact of incentives, in particular, revenue-based incentives. Implement the strategy plans by developing a comprehensive tax expenditure framework. Evaluate tax incentives while taking into account the emerging implementation of the global minimum tax (Pillar Two).
3.3. Implementing CbC Reporting: Implement strategy by adopting model legislative, administrative and technological requirements of OECD/G20 BEPS Action 13 Minimum Standard in order to benefit from receiving CbC reports; and effectively use information for risk assessments.

© 2024 IBFD

3.4. Implementation of EOI on tax rulings: In case Uganda decides to implement OECD/G20 BEPS Action 5 Minimum Standard concerning EOI on tax rulings, based on a cost-benefit analysis, adopt legislative, administrative and technological requirements necessary to exchange relevant tax rulings.

© 2024 IBFD

Annexes

A. B.A.T. Questionnaire, B.A.T. Scoring Criteria and list of tax authorities' officials

A.1. B.A.T. Questionnaire answered by the Uganda tax authorities

The B.A.T. questionnaire including the answers from the Ministry of Finance Planning and Economic Development and Uganda Revenue Authority (Uganda tax authorities) is marked as Annex A.1. and is attached to this report.

A.2. B.A.T. Key Areas of Assessment, Performance Indicators and Criteria for Scoring

The document containing the B.A.T. Key Areas of Assessment, Performance Indicators and Criteria for Scoring based on international best practices is marked as Annex A.2. and attached to this report.

A.3. List of tax authorities' officials

The list of tax authorities' key officials that have answered the B.A.T. Questionnaire and participated in the interviews during the in-country visit is marked as Annex A.3. and attached to this report.

B. Information on Uganda

The Republic of Uganda is a landlocked country bordered by Kenya in the east, Sudan in the north, Democratic Republic of the Congo in the west, Rwanda in the southwest and Tanzania in the south. Uganda's economy is made up of the agriculture 24.2%; industry 25.5%; and services 50.3% sectors.
The agricultural sector includes fisheries, animal husbandry, dairy, and crop sub-sectors. While the industrial sector includes manufacturing, construction, and electricity supply sub-sectors; the services sector is made up of wholesale and retail trade, telecommunications, hotels and restaurants, transport and communications and tourism sub sectors.[60]

Uganda is also endowed with plenty of renewable energy resources that are still untapped especially solar, wind and mini hydropower resources. The demand for electricity is very high with an electrification rate of about 22% with 51% coverage anticipated by 2030. With Uganda's recoverable oil resources currently estimated at about 1.4 billion barrels, the country has undertaken to deliver production via the Tanzanian port of Tanga by a cross-border pipeline, built and operated by the East African Crude Oil Pipeline (EACOP) company. In February 2022, the government announced the final investment decision for Uganda's oil and gas projects by Total Energies EP Uganda, CNOOC Uganda Limited, the Uganda National Oil Company, and the Tanzania Petroleum Development Corporation. The FID announcement unlocks big opportunities for Ugandans with over 16 fields ring-fenced for local entities.[61]

The Ministry of Finance Planning and Economic Development projected the economy to have grown by 5.5% in 2022/23 compared to 4.6% in 2021/22. This growth rate compares favourably with the average

---

[60] Government of Uganda, https://www.gou.go.ug/about-uganda/uganda-glance/economy (accessed 27 June 2023)
[61] F. Kabagumya, Uganda - Business and Investment sec. 1., Country Tax Guides IBFD (accessed 27 June 2023).

© 2024 IBFD

growth rate for Sub-Saharan Africa estimated at 3.6% for calendar year 2023. The size of Uganda's economy is estimated at UGX 184.3 trillion (USD 49.4 billion), compared to UGX 162.9 trillion (USD 45.6 billion) 2021/22.[62]

B.1. Basic information on the country's tax system

Basic information on the country's tax system, Uganda – Corporate Taxation, IBFD's Country Tax Guides, is set out in Annex B.1.

B.2. Information on relevant international treaties and initiatives

(1) OECD/G20 Inclusive Framework on BEPS and its members is marked as Annex B.2.1.: Uganda has not joined the Inclusive Framework;
(2) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) is marked as Annex B.2.2.: Uganda has not signed the MLI
(3) Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy is marked as Annex B.2.3.: Uganda has not signed up to the statement on the Two-Pillar Solution.
(4) Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Uganda signed the OECD Mutual Administrative Assistance in Tax Matters (1 September 2016 – effective (internationally) since 1 January 2017) is marked as Annex B.2.4...
(5) ATAF Mutual Assistance Agreement: Uganda signed the ATAF Mutual Assistance Agreement (17 February 2014 – effective since 23 September 2017) is marked as Annex B.2.5.
(6) Multilateral Competent Authority Agreement(s) (e.g. CRS Multilateral Competent Authority Agreement (CRS MCAA) is marked as Annex B.2.6; and Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA)) is marked as Annex B.2.7.: Uganda is not a signatory to the CbC MCAA.
(7) The Ugandan Implementation Act of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the CRS MCAA is marked as Annex B.2.8.

B.3. Tax treaty policy, country and related tax treaty model conventions and tax treaties

Treaty policy and model conventions are marked Annex 3.1. *See* the Uganda DTA Policy marked Annex B.3.1.1; the Uganda Model Tax Convention marked Annex B.3.1.2.; the EAC Model Tax Convention marked Annex 3.1.3. and the ATAF Model Tax Convention marked Annex 3.1.4.

Tax treaties are marked Annex 3.2.
See marked Annex. B.3.2.1:

(1) Uganda has tax treaties in force with the following countries:
    1. Denmark (2000)
    2. Mauritius (2003)
    3. India (2004)
    4. Italy (2000)
    5. Netherlands (2004)
    6. Norway (1999)
    7. South Africa (1997)

[62] Uganda Budget Speech, Financial Year 2023/2024, Recent Economic Performance, page 6

© 2024 IBFD

8. United Kingdom (1992)
9. Zambia (1968)

See marked Annex. B.3.2.2:

(2) List of tax treaties signed:
1. Belgium (2007)
2. United Arab Emirates (2015)
3. China (People's Rep.) (2012)

See marked Annex. B.3.2.3:

(3) List of tax treaties under (re)negotiation including status of negotiation.
1. Netherlands
2. Mauritius

See marked Annex B.3.3. a tabulated assessment of tax treaties in force and the latest EAC Model Convention with information on whether they contain specific provisions relevant to the assessment in section 2, prepared by the Assessment Team.

B.4. Organizational structure of the tax authorities

See URA departments' organizational structures, marked Annex B.4.1. *See* MOFPED's organizational structure, marked Annex B.4.2.

(1) **B.5. Strategies, plans and related documents of the tax authorities** *See* National Development Plan (DRMIII) 2020/21 – 2024/25, marked Annex B.5.1.
(2) *See* Domestic Revenue Mobilization Strategy 2019/20-2023/24, marked Annex B.5.2.
(3) *See* DRMS Implementation Plan 2022/23 – 2025/26, marked Annex B.5.3.
(4) *See* MOFPED Strategic Plan 2016-2021, marked Annex B.5.4.
(5) *See* URA Corporate Plan 2020/21-2024/25, marked B.5.5.
(6) *See* USAID DRM4D Annual Report FY 2022, marked Annex B.5.6.
(7) *See* USAID DRM4D Annual Plan FY 2023, marked Annex B.5.6.2

B.6. List of legislation relevant for the B.A.T. assessment

The relevant legislation used for the B.A.T. assessment is marked Annex B.6. This legislation is as follows:

(1) Income Tax Act, Chapter 340 of the Laws of Uganda (Annex B.6.1.);
(2) Tax Procedures Code Act 2014 (Annex B.6.2)
(3) Value Added Tax Act, Chapter 349 of the Laws of Uganda (Annex B.6.3.)

B.7. List of tax incentives

See the detailed list and description of tax incentives, marked Annex B.7.

Tax incentives and non-tax incentives are available to both foreign and local investors. The benefit for local investors is that they can access the tax incentives with a lower minimum capital requirement. Local and foreign investors can equally access non-tax incentives like land in the industrial parks, facilitation for infrastructure needs and policy advocacy for conducive environment. The following table with list and description of income tax incentives has been taken from URA's Guide on Tax Incentives Available to the

© 2024 IBFD

Investors in Uganda.[63] A detailed list and description of tax incentives table including on VAT and Customs duty is marked Annex B.7.

Income Tax Incentives			
Beneficiary	**Incentives**	**Period of Incentive**	**Conditions for the Tax Incentive**
Developer of an industrial park/free zone	Exemption of income derived from renting out or leasing facilities established in an Industrial park or free zone.	10 years	Must invest a minimum of USD 50m for foreign investors or USD 10m for EAC citizens, Incentive takes effect from the date of commencement of construction. Also applies to an existing investor making an additional investment of the same value.
Operator in an Industrial Park or Free Zone who invests in processing agricultural products; manufacturing or assembling medical appliances, medical sundries or pharmaceuticals, building materials, automobiles and house hold appliances; manufacturing furniture, pulp, paper, printing and publishing of instructional materials; manufacturing chemicals for agricultural use, industrial use, textiles, glassware, leather products, industrial machinery, electrical equipment, sanitary pads and diapers; establishing or operating vocational or technical institutes; or carrying on business in logistics and warehousing, information technology or commercial farming or manufacture of tyres, foot ware, mattresses or tooth paste; manufactures chemicals for agricultural use, industrial use, textiles, glassware, leather	Income derived by a person from undertaking any of the listed business activities in the Industrial Park or Free Zone.	10 years	Must invest a minimum of USD 10m for foreign investors and USD 300,000 for EAC citizens or USD 150,000 where the investment is made upcountry. Incentive takes effect from the date of commencement of the specified business, same incentives applies to an existing operator in an Industrial Park or Free Zone. The investor must use at least 70% of locally sourced raw materials and employ at least 70% EAC citizens who must take up at least 70% of the wage bill.

[63] A Guide onTax Incentives available to the investors in Uganda – The Taxman (ura.go.ug)

© 2024 IBFD

products, industrial machinery, electrical equipment, sanitary pads and for diapers			
Investor outside an industrial park or Free zone carrying out activities as in 2 above.	Income derived by a person from undertaking any of the specified business activities.	10 years	Must invest a minimum of USD 10m for foreign investors and USD 300,000 for EAC citizens or USD 150,000 where the investment is made upcountry. Incentive takes effect from the date of commencement of the specified business, same incentives applies to an existing operator in an Industrial Park or Free Zone. The investor must use at least 70% of locally sourced raw materials and employ at least 70% EAC citizens who must take up at least 70% of the wage bill.
Exporters of finished consumer and capital goods.	Income derived from the exportation of finished consumer and capital goods.	10 years	Exemption valid from the beginning of the investment. Investor must export at least 80% of production. Investor must apply for and be issued with a certificate of exemption.
Collective Investment Schemes to the extent of distribution	Income tax exemption for Collective Investment Schemes	Indefinite	Must be licensed to operate as a collective investment scheme. Participants in the scheme should not have day to day control over the management of the property. Participants contributions and ultimate income/ profits must be pooled Property must be managed as a whole by the operator of the scheme

© 2024 IBFD

Mining and petroleum operators	Special income tax deductions allowed and exemptions: Carry forward losses, 100% depreciation rate for depreciable assets acquired for mining exploration, deduction for contribution made by a licensee to a rehabilitation fund in accordance with an approved rehabilitation on amounts withdrawn from a rehabilitation fund to meet expenditure incurred under an approved rehabilitation plan, 10% withholding tax on	Indefinite	Mining and petroleum operators
	payments made to sub-contractors as a final tax as opposed to 15%, deduction of social infrastructure costs incurred in accordance with the mining lease.		
Aircraft Operators	Income Tax exemption for Aircraft Operators	Indefinite	Applies to persons engaged in air transport for domestic and international traffic or aircraft leasing.
Private employers of persons with disabilities (PWDs)	Deduction of 2% Income tax for employers that employ PWDs	Indefinite	5% of employees must be PWDs
Non-profit making Organizations	Income tax exemption	Indefinite	Where the Commissioner has issued a written ruling stating that it is exempt
Compliant taxpayers	6% WHT exemption on payment for goods and services and professional fees	12 months renewable	Where the Commissioner is satisfied that the taxpayer has regularly complied with the obligations under the tax laws
All taxpayers	100% deduction of Scientific research expenditure	Indefinite	A person who incurs expenditure for scientific research

© 2024 IBFD

All taxpayers	100% deduction of training expenditure	Indefinite	Employers who train permanent residents or provide tertiary education not exceeding in the aggregate 5 years
All taxpayers	Initial allowance and Depreciation allowance: Initial Allowance – capital deduction of 50% of qualifying Plant & machinery and 20% on Industrial building placed in the radius of 50Km outside the boundaries of Kampala. Person who places depreciable assets in service e.g. computers, automobiles, specialized trucks, tractors, plant and machinery used in farming, manufacturing or mining operations, trailers and trailer mounted containers; and Industrial building deduction of 5% on cost of Construction straight line method for 20 years.	Indefinite	All taxpayers with depreciable assets
All taxpayers	Carry-forward losses: Assessed loss is carried forward as a deduction in the following year of income.	Duration of the loss	All taxpayers
Investor established in a country with which Uganda has a DTA	Double Taxation Agreements (DTA): Investors from countries with active DTAs with Uganda i.e. United Kingdom, Denmark, Norway, South Africa, India, Italy, Netherlands and Mauritius. Withholding tax rates applicable to dividends, interests, management fees and royalties are 10% except UK at 15%	Duration of the DTA	Beneficial owner of investment as defined in the Income Tax Act established with economic substance in a country with which Uganda Has a DTA.
Foreign transporters	Exemption of income derived from transportation of passengers or goods or mail embarked outside Uganda	Indefinite	Transportation of passengers or goods or mail must have embarked outside Uganda

© 2024 IBFD

B.8. IF Peer Review Reports on Uganda

Uganda has not joined the Inclusive Framework; therefore, Uganda has not been peer reviewed for any of the Minimum Standards.

---

[i] **Compliance with Minimum Standard on preferential regimes (OECD/G20 BEPS Action 5) – Criteria for assessing preferential tax regimes**

(OECD, *Harmful Tax Practices – 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project ch. 1 (OECD Publishing 2019), available at https://doi.org/10.1787/9789264311480-en):

"1. For more than 20 years, the FHTP has reviewed preferential regimes to ensure that they do not contain features which can negatively impact the tax base of other jurisdictions, and cause a race to the bottom. This process includes a detailed review of applicable legislation and an open dialogue between FHTP members (which, since 2016, comprises all Inclusive Framework members) including the jurisdiction providing the relevant regime. The focus of the work is on preferential regimes that provide benefits to geographically mobile business income (such as income from the provision of intangibles, and financial services), which present a risk of BEPS activity. The review does not include regimes that relate to non-geographically mobile activities such as manufacturing, given that these present an inherently lower risk of BEPS activity. These activities have been out of scope from the FHTP work since the 1998 Report (OECD, 1998).

2. Inclusive Framework members commit to ensure that their preferential regimes do not implicate any of the key factors used in the review process, and if they are found to do so, commit to ensure they are amended or abolished. These factors, originally set out in the 1998 Report (OECD, 1998) which laid the foundation for the OECD's work on harmful tax practices, have been revised by the Inclusive Framework (as set out in detail in Annex A of this Progress Report) and now consist of five key factors and five other factors.

Table 1.1 Criteria for assessing preferential tax regimes

Five key factors
The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities.
The regime is ring-fenced from the domestic economy.
The regime lacks transparency.
There is no effective exchange of information with respect to the regime.
The regime fails to require substantial activities.[1]
Five other factors
An artificial definition of the tax base.
Failure to adhere to international transfer pricing principles.
Foreign source income exempt from residence country taxation.
Negotiable tax rate or tax base.
Existence of secrecy provisions.

1. This includes the 2015 Action 5 Final Report (OECD, 2015[2]), the 2017 Progress Report (OECD, 2017[3]), and any guidance on substantial activities agreed by the FHTP and Inclusive Framework thereafter.

3. Each key factor is briefly described below.

© 2024 IBFD

- *The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities.*

  A low or zero effective tax rate on the relevant income is a necessary starting point for an examination of whether a preferential tax regime is harmful. When a preferential regime benefits income from geographically mobile activities and meets this factor, it is in scope for the FHTP. However, the tax rate factor alone does not imply that a preferential regime is harmful; rather it is a gateway criterion that, if met, means that the FHTP will continue the review process to determine if one or more of the other key factors are implicated.

- *The regime is ring-fenced from the domestic economy.*

  Some preferential tax regimes are partly or fully insulated from the domestic economy of the jurisdiction providing the regime. The fact that a jurisdiction has designed the regime in a way that protects its own economy from the regime by ring-fencing provides a strong indication that a regime has the potential to create harmful spill-over effects. Ring-fencing focusses on the legal or administrative barriers to participation in the domestic economy, rather than the case where only a small number of domestic taxpayers take advantage of the regime. Ring-fencing may take a number of forms, including:
  - A regime may explicitly or implicitly exclude resident taxpayers from taking advantage of its benefits.
  - Enterprises which benefit from the regime may be explicitly or implicitly prohibited from operating in the domestic market.

- *The regime lacks transparency.*

  A lack of transparency may arise from the way in which a regime is designed and administered. For example, where the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure.

- *There is no effective exchange of information with respect to the regime.*

  When the jurisdiction lacks an effective exchange of information with respect to the regime, this can inhibit the ability of other tax authorities to enforce effectively its rules.

- *The regime encourages operations or arrangements that are purely tax-driven and involve no substantial activities.*

  This factor has been elaborated in the work of the 2015 OECD/G20 BEPS Action 5 Report (OECD, 2015), requiring that in order to benefit from a preferential regime, the taxpayer must have engaged in the activities giving rise to the income.

  In the case of regimes that give benefits to income from intellectual property (“IP”), this requirement means being compliant with the “nexus approach” as detailed in the 2015 OECD/G20 BEPS Action 5 Report (OECD, 2015). The nexus approach requires a link between the income benefiting from the IP regime and the extent to which the taxpayer has undertaken the underlying research and development that generated the intellectual property. The FHTP uses a substantive approach, reviewing IP regimes that are targeted at IP income (such as patent boxes) as well as regimes that provide for benefits to a wider range of geographically mobile activities but include income from IP (such as certain free zones or international business companies).

© 2024 IBFD

The 2015 OECD/G20 BEPS Action 5 Report (OECD, 2015) also contains more general guidance for the application of the substantial activities criterion to non-IP regimes, and further detail on the FHTP's approach is set out in Annex D of the 2017 Progress Report (OECD, 2017). This ensures that the core income generating activities are undertaken, including with an adequate number of full- time, qualified employees and an adequate amount of operating expenditure, supported by a transparent mechanism to ensure compliance.

4. In many cases, jurisdictions make government commitments to amend or abolish their regimes within a certain time, on the basis of concerns expressed by the FHTP that there are potentially harmful features, and such regimes are found to be "in the process of being amended or eliminated." If the FHTP concludes that a regime meets the no or low effective tax rate factor, and one or more of the other factors applies, it would be found to be potentially harmful, whether in the absence of such a commitment or where such commitment to amend or abolish the regime was not met by the agreed time.

5. When the FHTP concludes that a regime is potentially harmful, the next step is to assess whether the regime has harmful economic effects. For this assessment, economic data is used (such as number of taxpayers and amount of income benefiting from the regime). When the economic effects shows that the regime is not harmful in practice, the regime is found be potentially harmful but not actually harmful. This means that the jurisdiction does not have to take steps to amend the regime, but the regime is subject to a yearly monitoring process by the FHTP and where changes in economic effects are identified, the conclusion can be revisited. Where a regime is found to be actually harmful, the jurisdiction is expected to amend or abolish the regime in accordance with the FHTP timelines. This includes ensuring that such regimes are quickly closed-off to new applicants and new expansions of business activities, and that any grandfathering is provided for a limited transition period only.

Table 1.2 Timelines for grandfathering

Report	Timelines		
Action 5 Report	The report provides for timelines for IP regimes from OECD/G20 countries, as follows:		
	Cut-off date to benefit from grandfathering	As soon as possible and no later than 30 June 2016 For related party acquired IP assets: 1 January 2016	
	Close-off date (the date the regime is amended / abolished)	As soon as possible and no later than 30 June 2016	
	Grandfathering period (final end date of the regime)	30 June 2021	
2017 Progress Report - Annex B	The report provides for timelines for regimes listed as "in the process of being amended / eliminated" and to which its Annex B applies in the 2017 Progress Report, as follows:[1]		
		IP regimes	Non-IP regimes
	Cut-off date to benefit from grandfathering	As soon as possible and no later than 30 June 2018 For related party acquired IP assets: date of the publication of the Progress Report (16 October 2017)	Date of the publication of the Progress Report (16 October 2017)
	Close-off date (the date the regime is amended/abolished)	As soon as possible and no later than 30 June 2018	One year after the date of the publication of the Progress Report (i.e. 16 October 2018), or where necessary because of the legislative process, by 31 December of the year following the cut-off date (i.e. 31 December 2018)
	Grandfathering period (final end date of the regime)	30 June 2021	30 June 2021

1. New timelines for other IP regimes (e.g. of jurisdictions that joined the Inclusive Framework later) will be published at a later stage.

© 2024 IBFD

[ii] **Compliance with Minimum Standard on EOI on tax rulings (OECD/G20 BEPS Action 5) – Terms of Reference**

(OECD (2021), BEPS Action 5 on Harmful Tax Practices – Transparency Framework: Peer Review Documents, pp. 9-12, (OECD Paris), available at www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf)

"I. The information gathering process

A. Jurisdictions should collect information relating to the tax rulings that are in the scope of the transparency framework. In particular:

1. Jurisdictions should identify tax rulings within the scope of the transparency framework. This requires:

    1. **Identifying tax rulings that are (i) rulings related to a preferential regime; (ii) cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (iii) cross-border rulings providing for a unilateral downward adjustment to the taxpayer's taxable profits that is not directly reflected in the taxpayer's financial / commercial accounts; (iv) permanent establishment rulings; or (v) related party conduit rulings.**
    2. Identifying for each of these categories of tax rulings those that are past rulings and future rulings. The obligation to identify and gather information on past rulings remains in place for those Inclusive Framework members that joined by, and jurisdictions of relevance identified by 1 September 2017 as well as developing countries (non-financial centre) that requested additional time for the implementation, that fall under the following circumstances: i) they have identified past rulings not previously reported; and/or ii) they are still finalising the identification of past rulings in scope of the transparency framework; and/or iii) the necessary information and gathering process is not yet in place.3 For all other jurisdictions that joined the Inclusive Framework or were identified as a jurisdiction of relevance on or after 1 September 2017, there is no obligation to conduct spontaneous exchange of information on past rulings.
    3. For jurisdictions with IP regimes, identifying taxpayers benefitting from the third category of IP assets; new entrants benefitting from grandfathered IP regimes, regardless of whether a ruling is provided; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption.

2. With respect to each tax ruling in scope, jurisdictions should identify all jurisdictions for which the tax ruling would be relevant. This requires:

    1. Identifying the following jurisdictions:
       1. Jurisdictions of residence of related parties with which the taxpayer enters into a transaction covered by the ruling, or which gives rise to income from related parties benefiting from a preferential treatment;
       2. The jurisdiction of residence of the immediate parent of the taxpayer;
       3. The jurisdiction of residence of the ultimate parent of the taxpayer;
       4. For PE rulings, the jurisdiction of the head office;
       5. For conduit rulings, the jurisdiction of residence of the ultimate beneficial owner of the payment.

    2. With respect to past rulings, if all jurisdictions for which the tax ruling would be relevant cannot be identified, jurisdictions should record and report instances of the use of the "best efforts approach."

© 2024 IBFD

This should include the relevant category(ies) of ruling where it was used and a brief description of the efforts taken to identify related parties.

3. Jurisdictions should have in place a review and supervision mechanism to ensure that all relevant information is captured adequately, taking account of the separation of taxing powers between different levels of government.

II. The exchange of information

B. Jurisdictions should undertake compulsory spontaneous exchange of information on the tax rulings within the scope of the transparency framework. This requires:

1. Having a domestic legal framework allowing spontaneous exchange of information and exchange of information on request;
2. Having international exchange of information instruments that:
   1. Are in force and effect; and
   2. Permit spontaneous exchange of information on the relevant tax rulings and the subsequent exchange of the relevant tax rulings on request.
3. Ensuring that each of the mandatory fields of information required in the template contained in Annex C of the 2015 Action 5 Report (OECD, 2015) are present in the information exchanged (noting, however, that in respect of past rulings, not all information in respect of related parties may be available in which case the "best efforts" approach should be applied);
4. Ensuring that the information is in the form of the template contained in Annex C of the 2015 Action 5 Report (OECD2015) or the OECD XML Schema and in accordance with the OECD XML Schema User Guide.
5. Putting in place appropriate systems to ensure that information on rulings is transmitted to their competent authority responsible for international exchange of information without undue delay.
6. Ensuring the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the following timelines:
   1. For past rulings, as soon as possible for those Inclusive Framework members that joined, and jurisdictions of relevance identified by 1 September 2017 as well as developing countries (non-financial centre) that requested additional time for the implementation, that still have to complete the identification and exchange of information on past rulings and for which recommendations on these specific aspects of the ToR have been issued and not yet addressed..
   2. For future rulings, as soon as possible and no later than three months after the tax ruling becomes available to the competent authority.
7. Ensuring that subsequent requests by another jurisdiction for a copy of a tax ruling made in connection with the transparency framework is responded to, or a status update is provided, within 90 days of the receipt of the request.

III. Confidentiality

C. With respect to information on rulings received under the transparency framework, jurisdictions should ensure that the information received is kept confidential. This requires:

1. Having international information exchange mechanisms which provide that any information received should be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
2. Having the necessary domestic law to give effect to the restrictions contained in the international exchange of information instrument;

© 2024 IBFD

3. Having effective penalties for unauthorised disclosures of confidential information;
4. Ensuring confidentiality in practice; and
5. Respecting the terms of the international exchange of information instrument, including the limitation on use of information received for taxable periods covered by the agreement.

IV. Statistics

D. Jurisdictions should keep statistics on the exchange of information under the transparency framework. This requires:

1. Reporting the total number of spontaneous exchanges sent under the framework.
2. Reporting the number of spontaneous exchanges sent by category of ruling.
3. Reporting, for each category of ruling exchange, a list identifying which jurisdictions information was exchanged with."

[iii] **Compliance with Minimum Standard on preventing tax treaty abuse (OECD/G20 BEPS Action 6) – Terms of Reference**

(OECD (2021), BEPS Action 6 on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – Revised Peer Review Documents, OECD/G20 Base Erosion and Profit Shifting Project, pp. 6-7, (OECD Paris), available at www.oecd.org/tax/beps/beps-action-6-preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstances-revised-peer-review-documents.pdf.)

"A. Terms of Reference

8. The minimum standard on treaty-shopping included in the Report on Action 6 is constituted by the provisions that jurisdictions that are members of the Inclusive Framework on BEPS have committed to include in their tax treaties. Concretely, as indicated in paragraphs 22 and 23 of the Report on Action 6, compliance with the minimum standard on treaty-shopping will therefore require these jurisdictions to include in their tax treaties:

A. An express statement, found in the preamble text of the 2017 OECD Model Tax Convention and in Article 6(1) of the MLI, that the common intention of the parties to the treaty is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. This should generally be done by including the following in the preamble of the relevant tax treaties:

   Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States)

B. Treaty provisions that will implement that common intention and that will take one of the following three forms:

© 2024 IBFD

i) the Principal Purposes Test (PPT) rule included in paragraph 26 of the Report together with either the simplified or the detailed version of the Limitation-on-benefits (LOB) rule that appears in paragraph 25 of the Report, as subsequently modified, or

ii) the Principal Purposes Test (PPT) rule included in paragraph 26 of the Report, or

iii) the detailed version of the Limitation-on-benefits (LOB) rule that appears in paragraph 25 of the Report, as subsequently modified, together with a mechanism (such as a treaty rule that might take the form of a PPT rule restricted to conduit arrangements, or domestic anti-abuse rules or judicial doctrines that would achieve a similar result) that would deal with conduit arrangements not already dealt with in tax treaties.

9. The PPT is found in Article 29(9) of the 2017 OECD Model Tax Convention and in Article 7(1) of the MLI. The LOB is in Article 29(1-7) of the 2017 OECD Model Tax Convention and the simplified LOB in Article 7(8-13) of the MLI.

10. Paragraph 23 of the Final Report on Action 6, which presents the obligation to implement the minimum standard, reads as follows:

"Countries commit to adopt in their bilateral treaties measures that implement the minimum standard described in the preceding paragraph if requested to do so by other countries that have made the same commitment and that will request the inclusion of these measures. Whilst the way in which this minimum standard will be implemented in each bilateral treaty will need to be agreed to between the Contracting States, this commitment applies to existing and future treaties. Since the conclusion of a new treaty and the modification of an existing treaty depend on the overall balance of the provisions of a treaty, however, this commitment should not be interpreted as a commitment to conclude new treaties or amend existing treaties within a specified period of time. Also, if a country is not itself concerned by the effect of treaty-shopping on its own taxation rights as a State of source, it will not be obliged to apply provisions such as the LOB or the PPT as long as it agrees to include in a treaty provisions that its treaty partner will be able to use for that purpose. Whilst the minimum standard will be included in the multilateral instrument that will be negotiated pursuant to Action 15 of the BEPS Action Plan, which will provide an effective way to implement it swiftly, this may not be sufficient to ensure its implementation since participation in the multilateral instrument is not mandatory and two countries that are parties to an existing treaty may have different preferences as to how the minimum standard should be met; monitoring of the implementation of the minimum standard will therefore be necessary."

11. It is understood from paragraph 23 of the Final Report on Action 6 that::

- Jurisdictions only need to satisfy the requirements described in the previous paragraph if requested to do so by another jurisdiction member of the Inclusive Framework on BEPS.
- The way in which the minimum standard will be implemented in each bilateral treaty will need to be agreed to between the contracting jurisdictions.
- This commitment applies to existing and future treaties but since the conclusion of a new treaty and the modification of an existing treaty depend on the overall balance of the provisions of a treaty, this commitment should not be interpreted as a commitment to conclude new treaties or amend existing treaties within a specified period of time.
- If a jurisdiction is not itself concerned by the effect of treaty-shopping on its own taxation rights as a State of source, it will not be obliged to apply provisions such as the LOB or the PPT as long as it agrees to include in a treaty provisions that its treaty partner will be able to use for that purpose."

© 2024 IBFD

12. It is also understood from paragraph 23 of the Final Report on Action 6 that, while the MLI provides an effective way for jurisdictions that choose to apply the PPT to implement the minimum standard swiftly, participation in the MLI is not mandatory and jurisdictions may have different preferences as to how the minimum standard should be met. However, jurisdictions that have signed the MLI are expected to take steps to ensure that it starts to take effect with respect to their Covered Tax Agreements. Where two parties to a tax treaty have signed the MLI but only one has listed the tax treaty, listing the tax treaty amounts to a request to implement the minimum standard.

[iv] **Compliance with Minimum Standard on CbC reporting (OECD/G20 BEPS Action 13) – Terms of Reference**

(OECD (2020), BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents: October 2020, pp. 12-17, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, available at www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf):

"6. These terms of reference break down the key components of the standard into specific criteria, focussed around three key elements:

A. The domestic legal and administrative framework
B. The EOI framework
C. The confidentiality and appropriate use of CbC reports

7. Each Inclusive Framework member jurisdiction will be assessed against these terms of reference. Defined terms used throughout this document take their meaning from the 2015 Action 13 Report (OECD, 2015) including the model legislation it contains. For convenience, a glossary of certain key terms is included in section D of these terms of reference.

A. The domestic legal and administrative framework

8. Jurisdictions should put in place the domestic legal and administrative framework to ensure CbC reporting by the relevant taxpayers to the tax administration. This requires the following:

(a) **Parent entity filing obligation**. Introducing a CbC report filing obligation on Ultimate Parent Entities:

i. which applies to an entity which is resident in its jurisdiction and which is the Ultimate Parent Entity of an MNE Group;

ii. which applies to MNE Groups with annual consolidated group revenue in the immediately preceding fiscal year of 750 million Euro or more (or a near equivalent amount in domestic currency as of January 2015);

iii. whereby the Ultimate Parent Entity is required to include in the CbC report any Constituent Entity that is (i) any separate business unit of the MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE Group were traded on a public securities exchange, (ii) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds, and (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

iv. which would not exclude an entity from CbC reporting other than as permitted by the 2015 Action 13 Report (OECD, 2015).

(b) **Scope and timing of parent entity filing**. Providing that the filing of a CbC report by an Ultimate Parent Entity (or, if applicable, by a Surrogate Parent Entity) must be in accordance with the following:

© 2024 IBFD

i. reporting commences from a specific fiscal year;

ii. the CbC report includes all of, and only, the information as contained in the CbC report template in the Action 13 Report (OECD, 2015) with regard to each jurisdiction in which the MNE Group operates;

iii. the CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE Group;

iv. where rules or guidance are issued on other aspects of filing requirements (e.g. details on source of data, currency issues, definitions of information to be reported), ensuring that they are not inconsistent with, and do not circumvent, the minimum standard.

(c) **Limitation on local filing obligation**. If local filing requirements have been introduced, that such requirements apply only as follows:

i. whereby local filing applies to a Constituent Entity resident for tax purposes in the given jurisdiction;

ii. that the content of the CbC report is not required to contain more than that required of an Ultimate Parent Entity;

iii. that even if the conditions for local filing in (iv) have otherwise been met, no local filing of a CbC report can be required by the jurisdiction unless it has met the requirements of confidentiality, consistency and appropriate use;

iv. that no local filing of a CbC report relating to a particular fiscal year can be required unless one or more of the following conditions have been met with respect to that fiscal year:

a) the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence; or

b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a party by the time for filing the Country-by-Country Report; or

c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by its tax administration;

v. if there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in the jurisdiction, an MNE Group is allowed to designate one Constituent Entity to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the given jurisdiction.

(d) **Limitation on local filing in case of surrogate filing**. If local filing requirements have been introduced, local filing will not be required when there is surrogate filing in another jurisdiction by an MNE Group, to the extent that the following conditions are met with respect to that fiscal year:

© 2024 IBFD

i. the jurisdiction of the Surrogate Parent Entity requires filing of CbC reports that include all of, and only the information as contained in the CbC report template in the Action 13 Report (OECD, 2015);

ii. there is a Qualifying Competent Authority Agreement in effect with the jurisdiction of tax residence of the Surrogate Parent Entity by the filing deadline of the CbC report;

iii. the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the jurisdiction otherwise imposing local filing of any Systemic Failure;

iv. the CbC report is exchanged by the jurisdiction of the Surrogate Parent Entity;

v. the jurisdiction of the Surrogate Parent Entity has been notified by the Constituent Entity resident for tax purposes that it is the Surrogate Parent Entity, by a certain date (if such notifications are required);

vi. a notification is received from the Constituent Entity resident for tax purposes in the jurisdiction indicating the identity and tax residence of the Reporting Entity, by a certain date (if such notifications are required).

(e) **Effective implementation**. Providing for enforcement provisions and monitoring relating to CbC reporting's effective implementation:

i. having mechanisms (such as notifications and penalties) to enforce compliance by all Ultimate Parent Entities and Surrogate Parent Entities with their filing obligations;

ii. applying the above mechanisms effectively;

iii. determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed a CbC report, and in the case of local filing, determining the number of Constituent Entities filing CbC reports.

B. The exchange of information framework

9. The peer review will consider whether and to what extent jurisdictions have international exchange of information agreements that allow automatic exchange of information. Jurisdictions should exchange the CbC reports submitted to them by the Ultimate Parent Entity or Surrogate Parent Entity with certain other tax administrations. Jurisdictions should:

(a) Within the context of the international exchange of information agreements that allow automatic exchange of information, have Qualifying Competent Authority Agreements that are in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use prerequisites that underpin the Action 13 minimum standard;

(b) Ensure that each of the mandatory fields of information required in the template contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report as contained in the 2015 Action 13 Report (OECD, 2015) are present in the information exchanged;

(c) With respect to each CbC report, ensure that the CbC reports are exchanged with all tax jurisdictions listed in Table 1 of the CbC reporting template, provided there is an International Agreement and Qualifying Competent Authority Agreement in place with such jurisdictions;

(d) Ensure that the information to be exchanged is transmitted to the relevant jurisdictions on an annual basis in accordance with the timelines provided for in the relevant Qualifying Competent Authority Agreements;

(e) Ensure that a temporary suspension of exchange of information or termination of a Qualifying Competent Authority Agreement would be carried out only as per the conditions set out in such agreement;

(f) Ensure that their Competent Authority consults with the other Competent Authority before making a determination of Systemic Failure or significant non-compliance by that other Competent Authority;

(g) Ensure that the format used for the information to be exchanged complies with the OECD XML Schema and the information is provided in accordance with the OECD XML Schema User Guide;

(h) Ensure that an appropriate encryption method and method for electronic data transmission are in place.

© 2024 IBFD

C. Confidentiality and appropriate use of CbC reports

10. Jurisdictions should ensure that CbC reports are kept confidential and used appropriately. This requires the following:

11. With respect to confidentiality, jurisdictions should:

(a) Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;

(b) Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;

(c) Have in place and enforce legal protections of the confidentiality of the information contained in CbC reports which are received by way of local filing, which preserve the confidentiality of the CbC report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2011), a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes;

(d) Have effective penalties for unauthorised disclosures or unauthorised use of confidential information;

(e) Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;

(f) Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.

12. With respect to appropriate use:

(a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing:

i. can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis;

ii. cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis;

iii. are not used on their own as conclusive evidence that transfer prices are or are not appropriate;

iv. are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income).

(b) Where an adjustment is made in contravention of the above conditions, that jurisdiction making such an adjustment will promptly concede such adjustment in any competent authority proceedings.

13. Jurisdictions should have in place procedures or mechanisms to ensure that a consultation process takes place between Competent Authorities in cases where an adjustment of the taxable income of a Constituent Entity, as a result of further enquiries based on the data in the CbC report, leads to undesirable economic outcomes."

[v] **Compliance with Minimum Standard on effective tax treaty dispute resolution (OECD/G20 BEPS Action 14) – Terms of Reference**

© 2024 IBFD

(OECD, *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project pp. 9-15 (OECD 2016), available at www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-mechanisms-peer-review-documents.pdf):

A. Preventing Disputes – Elements of the Minimum Standard

"12. Taxpayers desire to have certainty on the tax treaty treatment of their cross-border trade and investment and clarity on the application and interpretation of the tax treaty. Such clarity and certainty is equally important for tax authorities. The legal authority for competent authorities to clarify any difficulties or doubts arising from the interpretation or application of their tax treaties is derived from tax treaty provisions that follow paragraph 3 of Article 25. In this regard, the Action 14 minimum standard requires that:

A.1. Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.
A.2. Jurisdictions with bilateral advance pricing arrangement ("APA") programmes should provide for the roll-back13 of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

B. Availability and Access to MAP – Elements of the Minimum Standard

13. Where tax treaty-related disputes arise between taxpayers and the tax authorities, a dispute resolution mechanism should be available to taxpayers based on the tax treaty irrespective of the remedies provided by the domestic laws of the treaty partners. Paragraph 1 of Article 25 provides a mechanism, the MAP, for the resolution of tax treaty-related disputes. Jurisdictions should ensure that taxpayers have access to MAP and that information relating to taxpayer access to MAP is readily available and accessible to the public.

14. To ensure that taxpayers have access to MAP, the Action 14 minimum standard requires that:

B.1. Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

B.2. Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

B.3. Jurisdictions should provide access to MAP in transfer pricing cases.

B.4. Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application

© 2024 IBFD

of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

B.5. Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

B.6. Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

B.7. Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

15. To facilitate taxpayers' access to MAP, jurisdictions should ensure transparency relating to their MAP regimes – information on how to access MAP must be available, clear and easily accessible to the public. In this regard, the Action 14 minimum standard requires that:

B.8. Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

B.9. Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

B.10. Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

C. Resolution of MAP Cases – Elements of the Minimum Standard

16. An effective dispute resolution mechanism must be capable of resolving disputes in a timely and principled manner. The legal authority for competent authorities to come together to discuss a MAP case with a view to resolving the case to avoid taxation which is not in accordance with the tax treaty may be derived from paragraph 2 of Article 25. The Action 14 minimum standard requires that:

C.1. Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

C.2. Jurisdictions should *see*k to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

© 2024 IBFD

C.3. Jurisdictions should ensure that adequate resources are provided to the MAP function.

C.4. Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to *see* reflected in future amendments to the treaty.

C.5. Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

C.6. Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

D. Implementation of MAP Agreements – Elements of the Minimum Standard

17. Any competent authority agreement reached on a MAP case by itself would not provide any relief to the taxpayer unless the agreement is implemented. The second sentence of paragraph 2 of Article 25 of the OECD Model Tax Convention requires that the agreement reached shall be implemented notwithstanding any time limits in the domestic law of the jurisdictions. The Action 14 minimum standard requires that:

D.1. Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

D.2. Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

D.3. Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available."

[vi] **Adoption of recommendations to align transfer pricing outcomes with value creation (intangibles; risks and capital; and global value chains and other high-risk transactions) (OECD/G20 BEPS Actions 8-10) – Description of rules considered for the purpose of the Performance Indicator.**

(OECD, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241244-en):

(1) Application of the arm's length principle

(For more information, *see* OECD, *Actions 8-10 Final Report 2015, Aligning Transfer Pricing Outcomes with Value Creation, Guidance for Applying the Arm's Length Principle*, p. 13)

(i) Actual business transactions undertaken by associated enterprises are "accurately delineated", giving primary emphasis to the consideration of the actual conduct of the parties.

(ii) Contractual allocation of risk is accepted if the entity, treated as bearing a risk, has actual control over that risk and has the financial capacity to assume that risk.

(iii) If an entity provides funding without, in fact, controlling the financial risks associated with that funding activity, then it will not be allocated the profits associated with the financial risks, but it will be entitled to a limited return. For example, because it just provides money on request, without any assessment of whether the party receiving the money is creditworthy.

(iv) Tax administrations may disregard transactions when the exceptional circumstances of commercial irrationality apply, i.e. when the transaction is commercially irrational and the structure of the transactions prevents the determination of an arm's length price.

© 2024 IBFD

(2) Commodity transactions

(For more information, *see* OECD, *Actions 8-10 Final Report 2015, Aligning Transfer Pricing Outcomes with Value Creation – Commodity Transactions*, p. 53.)

(i) The CUP method is an appropriate transfer pricing method for commodity transactions between associated enterprises.
(ii) Quoted prices can be used under the CUP method, as a reference to determine the arm's length price for the controlled commodity transaction.
(iii) Reasonably accurate comparability adjustments should be made, when needed, to ensure that the economically relevant characteristics of the controlled and uncontrolled transactions are sufficiently comparable.
(iv) Tax authorities may impute, under certain conditions, the shipment date (or any other date for which evidence is available) as the pricing date for the commodity transaction.

(3) Intangibles

(For more information, *see* OECD, *Actions 8-10 Final Report 2015, Aligning Transfer Pricing Outcomes with Value Creation – Intangibles*, p. 63.)

(i) Legal ownership of intangibles by an associated enterprise alone does not determine entitlement to returns from the exploitation of intangibles.
(ii) An appropriate remuneration is awarded to associated enterprises performing important value-creating functions related to the development, maintenance, enhancement, protection and exploitation of the intangibles.
(iii) An associated enterprise assuming risks in relation to the development, maintenance, enhancement, protection and exploitation of the intangibles must be able to control such risks and assume financial responsibility for them.
(iv) Entitlement of any member of the MNE group to profit or loss relating to differences between actual and expected profits will depend on which entity or entities assume the risks that caused these differences and whether the entity or entities are performing the important functions in relation to the development, enhancement, maintenance, protection or exploitation of the intangibles or contributing to the control over the economically significant risks, and it is determined that arm's length remuneration of these functions would include a profit sharing element.

(4) Low value-adding intra-group services

(For more information, *see* OECD, *Actions 8-10 Final Report 2015, Aligning Transfer Pricing Outcomes with Value Creation – Low Value-adding Intra-group Services*, p. 141.)

(i) A list of common intra-group services which command a very limited profit markup on costs.
(ii) A consistent allocation key for all recipients for those intra-group services.
(iii) Specific reporting requirements, including documentation showing the determination of the specific cost pool.

(5) Cost contribution arrangements (CCAs)

(For more information, *see* OECD, *Actions 8-10 Final Report 2015, Aligning Transfer Pricing Outcomes with Value Creation – Low Value-adding Intra-group Services*, p. 161.)

(i) The same analytical framework for delineating the actual transaction, including allocating risk, is applicable to CCAs as to other kinds of contractual arrangements.
(ii) The same guidance for valuing and pricing intangibles, including hard-to-value intangibles, is applicable to CCAs as to other kinds of contractual arrangements.
(iii) The analysis of CCAs is based on the actual arrangements undertaken by associated enterprises and not on contractual terms that do not reflect economic reality.

© 2024 IBFD

(iv) An associated enterprise can only be a participant to the CCA if there is a reasonable expectation that it will benefit from the objectives of the CCA activity and it exercises control over the specific risks it assumes under the CCA and has the financial capacity to assume those risks.

(v) Contributions made to a CCA, with specific focus on intangibles, should not be measured at cost where this is unlikely to provide a reliable basis for determining the value of the relative contributions of participants, since this may lead to non-arm's length results.

[vii] **Recommendations for measuring and monitoring BEPS (OECD/G20 BEPS Action 11) - Summary**

(OECD, *Measuring and Monitoring BEPS, Action 11 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project pp. 262-265 (OECD Publishing 2015), available at http://dx.doi.org/10.1787/9789264241343-en):

"Recommendation 1

The OECD should work with all OECD members, BEPS Associates and any country willing to participate to publish, on a regular basis, a new Corporate Tax Statistics publication, which would compile a range of data and statistical analyses relevant to the economic analysis of BEPS in an internationally consistent format. Among other information, this publication would include aggregated and anonymised statistical analyses prepared by governments based on the data collected under the Action 13 Country-by-Country Reports.

Recommendation 2

The OECD should work with all OECD members, BEPS Associates and any willing participating governments to produce periodic reports on the estimated revenue impacts of proposed and enacted BEPS countermeasures.

Recommendation 3

The OECD should continue to produce and refine analytical tools and BEPS Indicators to monitor the scale and economic impact of BEPS and to evaluate the effectiveness and economic impact of BEPS countermeasures.

Recommendation 4

Governments should improve the public reporting of business tax statistics, particularly for MNEs.

Recommendation 5

Governments should continue to make improvements in non-tax data relevant to BEPS, such as by broadening country coverage and improving data on FDI associated with resident SPEs, trade in services and intangible investments.

Recommendation 6

Governments should consider current best practices and explore new approaches to collaborating on BEPS research with academics and other researchers. Governments should encourage more research on MNE activity within tax administrations, tax policy offices, national statistical offices, and by academic researchers, to improve the understanding of BEPS, and to better separate BEPS from real economic effects and non-BEPS tax preferences."

© 2024 IBFD