

A REVIEW OF TRANSFER PRICING ISSUES IN LATIN AMERICA IN THE FRAMEWORK OF THE ACTIONS PROPOSED BY THE OECD IN ITS BEPS ACTION PLAN

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SYNOPSIS

This article addresses the main actions on transfer pricing of the **Action Plan on Base Erosion and Profit Shifting** prepared by the OECD, and its impact on the tax control of commercial transactions between related parties in the countries of Latin America, where the importance of the issue has raised the tax administrations attention.

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The **Action Plan on Base Erosion and Profit Shifting**¹ (or BEPS² Action Plan) is a work completed by the OECD³ with the purpose of improving the gaps that currently exist in

the mechanisms to combat international tax evasion. The OECD has expressed its concern for the use of aggressive tax planning schemes by various multinational enterprises.

In this context, certain business structures have made use of agreements to avoid double taxation in order to reduce their tax obligations and in some cases circumvent them. While it is true that tax treaties were created to avoid double taxation and to fight international tax evasion, on certain occasions they are instruments to generate double exemption.

It is hoped that the BEPS Action Plan allow to establish common bases in the tax control of commercial transactions between related parties, and in particular, in the countries of Latin America⁴, where the importance of the issue has called the tax administrations' attention.⁵

1. THE TRANSFER PRICING NORMATIVE

The question of the tax jurisdiction is closely related to the calculation of benefits: after determining that a part of a company's profits come from a particular country, which should be entitled to tax them, it is necessary to establish rules to allocate the proportion of the benefits that will be taxed. The OECD

has developed transfer pricing guidelines⁶ to address this problem.

The transfer pricing calculation is based on the internationally accepted Arm's Length Principle⁷, under which, for tax purposes, income between related parties must be distributed as

1. *Action Plan on Base Erosion and Profit Shifting. OECD 2013*
2. *In English, "Base erosion and profit shifting".*
3. *OECD Organization for economic development and cooperation link <http://www.oecd.org>*
4. *The report of the Inter-American Center of tax administration (CIAT) called Control of the manipulation of the transfer pricing in Latin America and the Caribbean (2013) will be taken as documentary baseLink: http://webdms.ciat.org/action.php?kt_path_info=ktcore.actions.document.view&fDocumentId=8068*
5. *70% of the countries of Latin America include general rules, 10% of these countries include basic principles, 78% have offices or specialized equipment and 73% perform field inspections. Source: The Control of transfer pricing manipulation, CIAT.*
6. *These rules were known as Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The last edition was in 2010. OECD. (Paris, 2010).*
7. *The criterion of OECD countries continues to be the arm's length principle as the one who should govern the determination of the transfer pricing between associated companies. This principle has a solid theoretical basis, offering the position closest to the operation of the free market in cases where properties (property or other tangible or intangible assets) are transmitted or services between associated companies are provided. Although it is not always easy to put into practice, it tends to determine appropriate levels of income among members of multinational, acceptable groups for tax administrations.*

if they were independent in identical or similar circumstances⁸.

The Arm's Length principle has been, for most Latin American legislations, the international standard to regulate transactions between related parties. This principle is based on comparing a transaction between related parties as if it had been made between independent parties in similar conditions.

When independent companies do business together, the market forces normally determine the conditions of their trade and financial relations (for example, the traded goods or services prices and the terms of the transaction or of the provision)⁹.

When operations take place between related companies, the market forces may not directly determine their relationships as it should be.

The Arm's Length principle establishes that the agreed price and the conditions under which transactions between related entities are developed are consistent with those that independent companies would agree in similar operations and comparable circumstances.

In transactions between independent companies, payments usually reflect the duties performed by each one of the entities, taking into account the assets used and the risks assumed. To determine if it is possible to compare operations with market transactions, an analysis is therefore necessary to ensure, from an economic point of view, that

the relevant characteristics of the situation under study are reasonably comparable.

A functional analysis to determine and compare the economically significant elements of the operation is a key of this analysis: the activities carried out, the assets involved, the responsibilities and the risks assumed by the parties.¹⁰

This principle, initially formulated by the League of Nations¹¹, is included in the legislation of most countries, and is enshrined in the Articles 7 and 9 of the Model Tax Conventions of the OECD and the United Nations, as well as practically all of the Double Taxation Conventions.

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and the report entitled "The attribution of profits to permanent establishments"¹² provide guidelines on the articles 7 and 9 application of conventions which are inspired by the OECD Model Tax Convention.

These guidelines have raised awareness of the need for an explicit legislation on transfer pricing involving documentary obligations¹³ and as a result, more and more countries have enacted legislation on transfer pricing and the related documentary requirements.

Although the vast majority of national transfer pricing regimes are based on the Arm's Length principle, each national scheme has its own characteristics and reflects the positions of each country in that area.¹⁴

8. *Addressing Base Erosion and Profit Shifting*. OECD. (Paris, 2013).

9. *Comment 1.2 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. OECD. (Paris, 2010).

10. *Addressing Base Erosion and Profit Shifting*. OECD. (Paris, 2013).

11. *International body created by the Treaty of Versailles, 28 June of 1919. Dissolved the April 18 of 1946, being succeeded by the United Nations (UN)*

12. *The attribution of profits to permanent establishments* (Link http://www.ief.es/documentos/recursos/publicaciones/libros/OCDE/14_Beneficios.pdf) OECD (Paris, 2008)

13. E. Llanares, Sébastien Gonnet et Yohann Bénard, *management stratégique des prix de transfert, says in his work 'a good transfer price policy must be supported by proper documentation and currently no taxpayer has such documentation'*. EFE. (Paris, 2006).

14. *Addressing Base Erosion and Profit Shifting*. OECD. (Paris, 2013).

One of the main premises of the Arm's Length principle is the functions, assets and risks of one of the parties to the transaction are more important, the greater the expected compensation will be, and vice versa. Therefore, this creates an incentive to move the functions, assets and risks where the taxation is more favorable.

It is sometimes difficult to move specific fundamental functions; however risks and ownership of tangible and intangible assets are, by their nature, easier to move.

Many business tax planning structures mainly focus on transferring the most important risks and intangible assets, difficult to assess, to countries of lower taxation, where they can benefit from a more favorable tax regime. These mechanisms may contribute or lead to the Tax Base Erosion and Profit Shifting.

It is to note that the contemporary economical context is characterized by a shift of global wealth towards emerging economies. This transition has its origins in the economic opening of China and India, a process that took shape during the decade of the nineties, and has increased with the beginning of the 21st century. The combination of the size of these economies with their intense and sustained growth, and their strong demand for natural resources, has provided support for growth in a number of emerging and developing economies. As a result, the emerging world is gaining more representativeness in the global economy¹⁵. Compared with Asia, Latin America contributes marginally to this wealth shift toward emerging countries¹⁶.

1.1. The control of operations with related parties in Latin America and the Caribbean

In the countries of Latin America and the Caribbean, developments in the control of transfer pricing has been uneven. If we classify countries, taking into consideration a series of indicators, such as the time when they were issued and implemented legislation, the control/audit progress and aspects related to human resources; five groups could be described¹⁷.

A **first group**, consisting of those countries which have implemented rules for more than one decade, includes Argentina, Brazil and Mexico; a **second group** of countries, which has implemented legislation later, but which have achieved substantial progress would include Chile, Ecuador, Dominican Republic and Venezuela.

In all the countries of these two first groups, regulations cover all or most of the aspects that allow the control of transfer pricing and have units dedicated exclusively to control them, documentation requirements, audits, as well as cases in courts.

A **third group** is made up of countries that have strengthened the transfer pricing laws and have created or are in a process of creating specialized units, as it is the case of Colombia, Peru and Uruguay.

A **fourth group** of countries are in more premature phase of development of the

15. *Economic Outlook for Latin America 2014. Logistics and competitiveness for development. The report says: "If in 2000 the relative weight of the non-OECD economies was 40% of world GDP, this proportion has increased to 49% in 2010 hoping to rise to 57 per cent in 2030". OECD/ECLAC/CAF (Paris, 2013). p. 68*

16. *The report says: "despite the period of growth which is registered in the region since the beginning of this century, we cannot say that Latin America has become a new pole of global growth."*

17. *Classification performed on data in 2012 from the report called Control of the transfer pricing manipulation in Latin America and the Caribbean. CIAT. (Panama, 2012)*

regulations, given that even though their laws have already been enacted, they have just been recently implemented or have not entered into force yet. Similarly, their units of transfer pricing are in formation process. This group includes El Salvador, Guatemala, Honduras and Panama.

The rest of the analyzed countries, which make up the **fifth group**, are those that to date have introduced no regulations. Here we find to Bolivia, Costa Rica, Jamaica, Nicaragua, Paraguay and Trinidad and Tobago. However, all countries mentioned, with the exception of Jamaica and Bolivia, are in process of developing regimes for the control of transfer pricing.

The majority of the regional countries tax administrations have carried out audits for the control of transfer pricing, although in some cases, as a result of the standards adopted, without considering the international framework of the Organization for Cooperation and Economic Development (OECD) guidelines.

Heterodoxy in the region can be seen in:

- The use of the method described in the Argentine legislation.
- Methods for the market prices determination of hotel operations in the Dominican Republic.
- “Protection regimes” or “safe harbors” for maquiladoras in Mexico.
- The Brazilian methods of fixed margins that have generated great discussions in international tax forums.

All of them have developed international guidelines and answers to the countries that have adopted them in order to counter abusive transfer pricing planning.

It has certainly developed a school of learning and replication of best practices and experience in the countries of the region. For example, five countries (Brazil, Ecuador, Guatemala, Peru and Uruguay) have collected the experience of Argentina and implemented measures similar to the sixth paragraph¹⁸ of its rules for valuation of goods traded on transparent markets or “commodities”¹⁹, when an intermediary located abroad is part of the transaction.

Consequently, the distribution of taxable bases of international groups between tax jurisdictions in Latin America is based on the Arm’s Length principle; in particular from the principles described in the OECD transfer pricing guidelines, however some countries in the region have implemented alternatives for the control of transactions between related parties which are different from the Arm’s Length principle.

On this topic in particular, it can be said that in Latin America transfer pricing problems are based on:

- How legislation is redacted.
- The training of inspectors.
- Knowledge of global chains of value (CGV)²⁰, the structure and functioning of business or economic sectors.

18. *The Argentinean law incorporated six paragraphs to article 15 of the tax law, giving a legal framework to the implementation of the sixth method. The sixth paragraph stipulates the implementation of a “best method” in the case of exports relating to cereals, oilseeds, other products of the land, hydrocarbons and their derivatives, and, in general, known in transparent markets traded goods, which involved an international intermediary which is not the effective recipient of the goods. The best method sorts consider transparent market price for the day of loading of the goods. Countries such as Uruguay and Brazil have extended the regulation, to the import operations by incorporating some criteria in their application.*

19. *Commodities are characterized by being marketed with a reference value in markets defined geographically with immediate or future delivery, they are interchangeable with others of the same type; their quality tends to differ very little, being essentially uniform without distinctions between producers.*

- Access to information in order to make the comparison of a transaction related to an independent transaction.
- The lack of effectiveness in the mechanisms for the exchange of tax information between tax administrations.
- Establish compliance goals that are reasonable for taxpayers according to the importance of international trade.

Now, the adaptation of legislation and the development of administrative capacities to strategic needs and fiscal resources of each country may constitute one of the success factors for the implementation of the Action plan on Tax Base Erosion and Profit Shifting.

While it is true that the Arm's Length principle has worked effectively in the majority of the countries of the region, and constitute some of the safest methods to reduce the double taxation risks and the risks of double exemption, "the limits of the Arm's Length principle raise questions about the possibility of an alternative basis for the assignment of groups of taxable bases between tax jurisdiction".²¹

In general, this means:

- Prioritize the compliance and control activities in respect of transfer pricing depending on the circumstances of each economy and particularly the type of international trade, its complexity and the number of large taxpayers affected
- Set realistic goals of enforcement and control, taking into account the capacities of the administration.

The OECD admits that national rules governing international taxation and standards are characterized by a low level of integration while today's worldwide taxpayers' environment is characterized by a constant evolution, widely supported by information and communication technologies.

For this reason, the concerns raised by the transfer of benefits were echoed by formulating an action plan, which we will discuss directly and indirectly regarding the transfer pricing treatment.

20. "These networks allow countries specialize in specific activities of the production process, without having to take all the necessary steps for the final production of the good. Additionally, in Latin America the services appear to be, in the case of some industries manufactures and primary products, as another potential source of added value". *Economic Outlook for Latin America 2014. Logistics and competitiveness for development. OECD/ECLAC/CAF 2013. (Paris, 2013) p. 21*

21. Bernard Castagnede. *Précis de Fiscalité Internationale. (Paris, 2010) p. 100.*

2. THE OECD ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING ²²

In the changing environment of international taxation, a number of countries have expressed concern about the way international standards in bilateral treaties distribute the taxing powers between source countries and residence countries.

This Action Plan focuses on addressing the Tax Base Erosion and Profit Shifting, and although actions proposed to combat Tax Base Erosion and Profit Shifting will restore enforcement both at the source or at the residence in a series of cases in which, otherwise, cross-border revenues would remain without tax or with very low taxation, those actions are not directly aimed at changing the current international standards regarding cross-border income tax powers distribution²³.

The OECD proposals on the Tax Base Erosion and Profit Shifting include works on:

1. **Intangible assets**, whose purpose is to clarify the rules on transfer prices relating to the use and transfer of intangible assets and clarify the economic obligations which must be respected in the agreements of the taxpayers,
2. **Documentary obligations**, which aims to simplify tax compliance while, at the same time, they provide States more useful information to evaluate the risks associated with transfer pricing, and
3. **Disclaimer rules (“safe harbors”)**, which purpose is to articulate mechanisms to effectively resolve the less controversial issues in relation to transfer pricing, so more

attention would be given to the delicate issue of the Tax Base Erosion and Profit Shifting.

On the other hand there are works on:

1. **The reorganization of companies**, discussing aspects of transfer pricing relating to the reorganization of companies and, in particular, issues related to the risk allocation are examined for the first time.
2. **Methods based on benefits**, which have resulted in new guidelines on the choice of the most appropriate transfer pricing method for each situation, and the practical application of transactional profit methods.
3. **The attribution of profits to permanent establishments**, in which the issues relating to the attribution of revenues to the branch operations in accordance with the Arm's Length principle are discussed.

In summary this Action Plan seeks to optimize national and international instruments against the Tax Base Erosion and profits shifting. In that sense, the OECD proposes some provisions to improve the existing rules, establishes a two years period to implement the actions, as well as the resources and methodology to implement the plan.

2.1. The Action Plan and the Latin-American context

Recognizing that the transfer of benefits is a global problem that clearly affects the mobilization of resources in developing countries, the OECD has so far organized two regional events.

22. *Action Plan on Base Erosion and Profit Shifting. (BEPS) OECD. (Paris, 2013).*

23. *Action Plan on Base Erosion and Profit Shifting OECD. (Paris, 2013).*

The first one was held in Seoul and the second, which we will present in the present work, was held in Bogotá on February 27 and 28, 2014²⁴. It gathered countries and organizations of Latin America and the Caribbean.²⁵

At the meeting held in the city of Bogotá, the implications that base erosion practices have for the countries of the region of Latin America and the Caribbean were discussed, as well as the specific challenges faced by countries to deal with the problems of profit shifting and the challenges for the administrations of the region to implement the new standards resulting from the BEPS Action Plan, among other issues.

In this view, two messages stand out from the meeting, which the authors understand as central to Latin American issues:

- The relative disparity in the level of development of the tax systems of the region, with special attention to international taxation, indicates that there is no unique approach, and that therefore the solutions must attend all situations.
- For developing countries, it is crucial that the resulting tax policy measures are capable of practical application, taking into account the current existing limitations regarding capacity of administrations and access to information

In addition, various issues in the context of the treatment of transfer pricing were discussed, such as:

1. The erosion of the base through the interest deduction and other financial charges (in accordance with Action 4 of the BEPS Action Plan).
2. Prevention of harmful tax competition between countries in the region (Action 5 of the BEPS Action Plan).
3. The prevention of abuse in the taxation of income derived from the extraction of natural resources, and the analysis of legislative measures adopted by countries of the region, including the so-called "sixth method"²⁶
4. The clarification of the tax treatment of intangibles, especially in relation to royalties (Actions 8-10 of the BEPS Action Plan).
5. The bases erosion through payments for services received from the central office (Action 10 of the BEPS Action Plan).
6. The convenience of a more effective and harmonized transfer pricing documentation, including the report country-by-country, without imposing a too heavy burden to businesses and tax administrations (Action 13 of the BEPS Action Plan).

We will now address the most important points of the referred actions that were featured at the meeting in Bogota and that the OECD aims to develop.

24. *Regional consultation on Erosion of foundations and transfer of benefits Bogotá - Colombia February 2014*, Link <http://www.oecd.org/ctp/resumen-LAC-consulta-regional-BEPS.pdf>

25. *The event has attracted 78 participants from 15 countries of the Region of Latin America and the Caribbean, as well as representatives of 10 regional and international organizations, including the OECD, the OECD's Korea Central, the Global Forum on transparency and exchange of tax information in the OECD, IMF, CIAT, G20, USAID, ITC, IDBCOEFIN, GIZ and the Commonwealth of Nations. Organizations representative of the business sector were also present (BIAC, through allies such as Repsol, Unilever and the Asociación Nacional de Industriales-ANDI Colombian and regional) and civil society (including TJN, TUAC, BEPS Monitoring Group, Global Alliance for Tax Justice and Latindadd).*

26. *The so-called sixth method, aims to avoid tax harmful triangulation in operations that involve primary products with known price quote. Strictly speaking, it is not a method in the context of the methods described by the OECD, but it improves an instrument anti-abuse, applicable to situations in which there is suspicion of harmful planning in the international operation, which refers to movable assets that are operated in large volumes, as it is the case with commodities.*

2.1.1. Limitation of the Tax Base Erosion by way of deductions on interest and other financial charges²⁷

The reduction of the tax base through the deduction of financial costs is certainly a prominent issue on the transfer pricing agenda for any country that require the inflow of large amount of funds from abroad via parent companies or financial institutions from economic groups for the development of the productive and commercial ventures.

Facing this issue, the OECD Plan aims to:

- Develop recommendations on best practices in the design of standards to avoid the Tax Base Erosion through the use of deductions for interest, for example, through the use of debt between related entities and with third parties to achieve the excessive deduction of interests or to finance the production of exempted or deferred income and other financial income which are economically equivalent to interest payments. The work will assess the effectiveness of different types of limitations.
- Establish guidelines on transfer pricing with respect to pricing of related financial transactions, including the financial guarantees and performance, derivatives (including internal derivatives used in interbank relations), and captive insurances and other kinds of insurance.

2.1.2. Fight against harmful tax practices, taking into account transparency and substance

Before the 2010 revision, the applicable OECD guidelines in the field of transfer pricing did not provide a general definition of “economic substance”, nor clarified, in general terms, how to deal with the economic substance of a related operation when it differs from its appearance²⁸.

The 2010 guidelines²⁹ provide for the possibility of a tax administration to question the contractual terms when they are not consistent with the economic substance of the transaction, or when are not adjusted to the behavior of the parties, however, the meaning of such process is open to many interpretations. In this sense, we regret to say that it lacks an orientation. The fact that the draft of the OECD TP Corporate Restructuring (2008), did not consider the economic treatment of economic substance, focusing only on the commercial rationality, is also regrettable.

It is true that the new chapter IX of the OECD guidelines include a section in which a definition of this concept is drafted³⁰. However, this quasi definition is inaccurate and seems to create more problems than it solves.

Several commentators have used the principle of “substance over form” to describe the situations in which a different treatment is applied. However, what is meant by “substance over form”, doesn't

27. *Action 4. Action Plan on Base Erosion and Profit Shifting. OECD. (Paris, 2013).*

28. *Andreas Bullen. Arm's Length Transaction Structures - Recognizing and Restructuring controlled transactions in transfer pricing. IBFD*

29. *Paragraph 1.48 to 1.54, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations . OCDE. (Paris, 2010).*

30. *Section C.2 determination of the economic substance of a transaction or an agreement*

seem to have any precise meaning and therefore provides only a modest guidance.

Action 5 of the BEPS Action Plan drafted by the OECD could generate the basis for a more precise and pragmatic definition of the principle of economic substance that would identify, classify and deal with those practices or maneuvers, from their real nature of tax abuse.

This Action 5 deals with the following points:

- To update the work on harmful tax practices with the improvement of transparency as a priority, including the spontaneous exchange required in individual resolutions regarding preferential regimes, and the existence of an substantial economic activity as a basic requirement to apply any preferential treatment.
- Taking a holistic approach for assessing preferential tax regimes in the context of the Tax Base Erosion and Profit Shifting.
- Work with countries that are not members of the OECD on the basis of the existing framework and modifications or additions to the existing framework will be considered.

On this last point the OECD understands that the current rules work well in many cases, but need to be adjusted to prevent the transfer of benefits resulting from the interactions between more than two countries, and to be fully useful in the context of global value chains.

In order to preserve the expected effects on the bilateral relations, rules need to be modified to address the use of multiple layers of legal entities between the country of residence and the source country.³¹

2.1.3. Prevent the artificial avoidance of the permanent establishment status.³²

The OECD consider convenient to review the definition of permanent establishment for the purposes of:

- Prevent artificial avoidance of the status of permanent establishment, including through the use of mechanisms of broker and exemptions for specific activity.
- Dealing with situations related to the allocation of profits.

The OECD recognizes that the multinationals have been able to use and abuse the regulations to separate incomes from the economic activities that produce them and move them to areas of low taxation.

This is almost always produced by transfers of intangibles and other mobile assets for less than their real value, by the overcapitalization of those entities that are taxed at reduced rates and contractual assignments of risks to territories of low taxation, in transactions that would rarely occur between independent parties.

The OECD understands that some special measures, either inside or outside of Arm's Length, may be necessary with respect to intangible assets, risk and excess of capitalization to deal with these shortcomings.

2.1.4. Intangibles³³

The OECD understands the importance of developing rules that prevent the Tax Base Erosion and Profit Shifting through the movement of intangible assets between the members of a group.

31. *The interposition of third countries in the bilateral framework established by the signatories of a Convention has led to the development of structures such as establishments of foreign companies of low taxation, instrumental societies, and the artificial movement of income through transfer pricing.*

32. *Action 7. Action Plan on Base Erosion and Profit Shifting. OECD. (Paris, 2013).*

33. *Action 8. Action Plan on Base Erosion and Profit Shifting. OECD. (Paris, 2013).*

This will involve, according to the OECD criteria:

1. The adoption of a wide and clearly delineated definition of intangible;
2. Ensure that the benefits associated with the transfer and use of intangible assets are properly assigned in accordance with (rather than separate from) the creation of value;
3. Develop rules of cost of transfer or special measures for the transfer of intangibles of difficult valuation; and
4. Update the regulation on cost-sharing mechanisms³⁴.

2.1.5. Risk and capital³⁵

The OECD considers that rules should be developed that prevent the Tax Base Erosion and Profit Shifting through the transfer of risks or excessive allocation of capital to members of the same group.

This will include the adoption of rules on transfer prices or special measures that will ensure that an entity will not obtain any inadequate results only by contractual assumption of risk or for having provided capital.

The norms to be developed will also require the alignment of results with the creation of value and their coordination with the work on deductions for interest expenses and other financial payments.

2.1.6. Other high risk transactions³⁶

Other sensitive issues that have raised concerns among the tax administrations are those transactions that would not occur, or would occur only rarely, between third parties and that allow the Tax Base Erosion and Profit Shifting.

The OECD considers that its treatment will involve the adoption of norms on transfer pricing or special measures to allow:

1. Establish the circumstances in which transactions can be re-qualified
2. Clarify the application of transfer pricing methods, in particular, the division of benefits, in the context of global value chains; and
3. Provide protection against the most common types of base erosion through payments such as management expenses and head office expenses.

2.1.7. Review the transfer pricing documentation³⁷

A key issue in the application of transfer pricing is the asymmetry of information between taxpayers and tax administrations.

In many countries, tax administrations have little capacity to develop a “General overview” of the global taxpayer value chain. In addition, the differences in approach to transfer pricing documentation requirements lead to significant administrative costs for companies.

In this regard, it is important that tax administrations have at their disposal adequate information about the relevant functions performed by other members of the multinational group regarding intra-group services and other transactions.

For this reason, the OECD finds important to develop rules relating to transfer pricing documentation to increase transparency towards the tax administration, taking into account the costs of compliance for businesses.

34. For more information on the mechanisms of distribution please read Chapter VIII, agreement on sharing costs of the guidelines applicable to transfer pricing in terms of prices for transfer to multinational enterprises and tax administrations. OECD. (Paris, 2010)

35. Action 9. Action Plan on Base Erosion and Profit Shifting .OECD. (Paris, 2013).

36. Action 10. Action Plan on Base Erosion and Profit Shifting. OECD. (Paris, 2013).

37. Action 13. Action Plan on Base Erosion and Profit Shifting .OECD (Paris, 2013).

The norms to be developed include the requirement that MNEs provide to all relevant Governments the necessary information about the global allocation of their revenues, economic activity and the taxes paid between countries, using a common model.

Actions to fight against Tax Base Erosion and Profit Shifting must be complemented with actions that guarantee the certainty and predictability. An important complement to the work on issues of Tax Base Erosion and Profit Shifting will be working to improve the effectiveness of the friendly procedures.

The interpretation and application of the new rules resulting from the work described above could introduce elements of uncertainty that should be minimized as possible.

As a consequence, efforts will be aimed at examining and combating obstacles preventing countries from resolving controversies arising from the application of the Convention through friendly procedures. Similarly the possibility of completing the existing provisions on friendly procedures in tax conventions with a mandatory and binding arbitration clause should be taken into account.

3. FROM POLITICAL AGREEMENT TO TAX LEGISLATION: THE NEED FOR PROMPT IMPLEMENTATION OF THE MEASURES

It is the understanding of the OECD that the fulfillment of the actions included in the action plan on the Tax Base Erosion and Profit Shifting will give rise to a series of results.

Some actions will result probably in recommendations related to domestic legal provisions, as well as changes in the comments to the Model Tax Convention of the OECD and the OECD transfer pricing guidelines. Probably, other actions will result in changes to the Model Tax Convention of the OECD.

This is the case for example of the introduction of a provision anti-abuse of Convention, changes in the definition of permanent establishment,

changes in the provisions on transfer pricing and the introduction of new provisions in the Convention relating to the imbalances by hybrid mechanisms.

Changes to the Model Tax Convention of the OECD will not be directly effective without the corresponding amendments in the bilateral tax conventions. If these are processed on a convention by convention basis, the large number of conventions in force can make this process very long, and more even when countries embark upon general renegotiation of their bilateral tax conventions. A multilateral instrument amending the bilateral agreements is a promising way forward in this regard.

4. CONCLUSIONS

As we have seen, the actions on transfer pricing of the BEPS Action Plan seek to identify those practical issues that limit the registration and control of operations that foster the artificial shifting of benefits through companies belonging to the same economic group.

To summarize, we can describe the following actions highlighted from the document on the challenges we face in the control of transfer pricing:

- a. The use and transfer of intangible assets and the economic obligations which must be respected in agreements between related parties;
- b. The simplification of documentary obligations to assess risks in transactions between related parties and better analysis in the global value chain of the taxpayer;
- c. Aspects relating to the reorganization of companies and, in particular, issues concerning the distribution of risks between related parties;
- d. The attribution of profits to permanent establishments, where the issues relating to the attribution of revenues to branch operations in accordance with the Arm's Length principle are examined;
- e. Guidelines with respect to the pricing of the related financial transactions, including the financial guarantees and performance, derivatives, captives insurances and other kinds of insurance, and loans between entities of the same group;
- f. The proposal to insert in double taxation conventions the rules of compulsory and binding arbitration on issues of transactions between related parties.

Effective enforcement actions in Latin America will depend on the possibilities and needs of each country, according to the development of their economies and of the technical and human capacity of their tax administrations.

It is also noteworthy that the OECD promotes the discussion of some special measures, either inside or outside the Arm's Length, in order to avoid the harmful transfer of benefits. The base principles from the OECD transfer pricing guidelines seem to be a common denominator in the region, however, individual cases as protection and anti-elusion rules, implemented by some countries, are presently created as a practical solution to certain situations in which the Arm's Length principle is not seen by the tax administrations as a realistic tool that allows to avoid the transfer of profits and correct abusive maneuvers.

Without a doubt, the role of international cooperation has been and will be a key in the development on the control of the transfer of benefits for the region. The organization and promotion of training and technical assistance by multilateral agencies such as the IDB, World Bank, CIAT, IMF, the European Union, OECD and UN present encouraging results in the fight against tax avoidance and tax evasion.

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