

General Views on the Global Anti – Base Erosion Proposal

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Objectives

- Simplification, effectiveness and certainty:
 - 3.4. tax on base eroding payments **falls short**
 - 3.3 Income inclusion rule: to the extent that it relies on effective tax rate test **risks failing too**
 - Effective tax rate tests can have multiple outcomes and bring about the same complexities that the current transfer pricing rules have brought about.
- Making anti-base erosion proposals work for Financing for Development by helping to reduce corporate illicit financial flows:
 - 3.4. Tax on base eroding payments places requires proving that the other jurisdiction has not **sufficiently** taxed, thus risks failing:
 - Highly reliant on administrative capacity
 - Highly reliant on significant cooperation and full transparency (far beyond CBCR)
 - 3.3 Income inclusion rule can be shaped to fulfill the objective
 - Addressing the global race to the bottom: responding to the erosion of the revenue potential of corporate tax particularly in developing countries (risk to Domestic Resource Mobilization)

Policy Rationale

- 3.3. the income inclusion rule cannot work unless the base rules are clear:
 - To device an effective tax rate test in this context is an unnecessary intermediate step - **focus on defining the tax base**
 - Countries should decide on their tax rates (we welcome attempts to coordinate a minimum/floor rate – realistic?).
 - The tax base should be defined at the corporate group level using observable allocation keys by reconciling the group wide profit from consolidated financial statements.
 - A robust definition of the MNE Group is crucial to prevent avoidance through Limited Risk Distributors or commissionaire arrangements etc.
 - While a global minimum corporate tax rate is desirable to stop the race to the bottom faster, this proposal can work if countries agree to maintain a rate that is not lower than the domestic corporate tax rate.

Economic and Behavioral Implications

- 3.3. Income inclusion: behavioral
 - Choice of observable allocation keys implies that inclusion of capital is problematic
 - Risks for avoidance are high because of easy manipulation -non-observable characteristics of capital value
 - Infinite ways to value capital under accountancy standards and national tax rules.
- 3.3. Income inclusion: economic
 - Choose factors that would enable governments to raise sufficient revenues to meet the human, social and economic rights obligations:
 - Inclusion of capital as a factor for allocation is problematic: Tends to reinforce the taxing rights of core high income economies, whilst weakening the rights of low income economies.
- Transparency is key for the income inclusion rule to work:
 - Make CBCR public and remove restriction to use for adjusting profits
- 3.4. Tax on base eroding payments: To overcome the challenges, consider a full denial of deductions on outbound payments to related entities.
- Coordination mechanism for these proposals: Is the OECD's Inclusive Framework fit for purpose? We need a truly inclusive global tax body.