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International tax evasion and avoidance schemes, including the use of shell companies

Summary

At the 16th session of the Committee, Mr. José Troya presented paper on issues related to international tax evasion and avoidance schemes, including the use of shell companies. He recommended, among other actions to be taken, that the Committee develop guidelines, recommendations, and risk management tools to fight the use of shell companies. After discussion on the topic, some Committee Members suggested that one priority could be to translate the newly developed standards and relevant guidelines for automatic exchange of information into practical steps that countries could follow. A need for capacity-building to support developing countries in this effort was noted.

The present paper proposes to develop new standards of automatic exchange of information on beneficial ownership with capacity-building program to help developing countries, particularly those with small economies. Such standards along with those on automatic exchange of information on financial accounts, would be instrumental in curbing the use of ghost companies and may even be used in the areas of transfer pricing and tax treaty negotiations.

The present paper is in response to the recommendation of the 16th session for an updated note taking into account the recommendations of the Committee for a decision on the issue at its 17th session.

GHOST COMPANIES SCHEMES

There are important international efforts that deal with abusive tax schemes. These efforts, however, should focus more in the misuse of offshore companies, created or used with the purpose of declaring fictitious operations or to deliberately disguise the true nature, value and location of its economic activities or to hide its beneficial owners¹.

These efforts should be taken into account by the UN Tax Committee, especially those related to automatic exchange of information and technical assistance.

This Committee may propose a new standard of automatic exchange of information on the beneficial ownership of companies to be generally adopted. Such standard would especially help countries, where tax regimes use the accrual principle to determine the corporate income tax base, complimenting the automatic exchange of information on financial accounts.

Additionally, the United Nations Committee could implement capacity building and technical assistance programs on these tax schemes, building upon similar initiatives already undertaken and sharing good practices.

There also may be contributions to other areas of work of the Committee, such as transfer pricing and tax treaties.

Developing countries

Many developing countries, especially those with small economies, do not always count with a sound regulatory system, reliable information or long-standing institutions. These shortcomings, together with a lack of “tax culture” of some economic agents, appear to produce a higher degree of aggressiveness in the use of ghost companies to reduce taxes, compared to such use in other countries. Moreover, tax problems arising from the informal sector, inherent to developing countries, are not only confined to small enterprises but to large players that use international schemes.

Therefore, the work on this issue may take into account that the use of ghost companies may be more aggressive in less developed countries, approaching evasion and crime, whereas in more developed countries such use may be less aggressive, approaching abuse and elusion in a more sophisticated fashion.

These circumstances suggest, together with the mandate² of the UN Tax Committee, that a focus in this issue is needed to compliment current areas of work, which may be more

¹ Ghost companies.

² “[...] (ii) Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities; (iii) Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations; [...] (v) Give special attention to developing countries and countries with economies in transition in dealing with all the above issues”.

sophisticated. The Chair of the OECD Task Force on Tax Crimes and Other Crimes, in the Preface of the publication “Fighting Tax Crime: The Ten Global Principles” states that “*The implementation of the 10 global principles around the world is critical in addressing the tax gap and supporting domestic resource mobilisation.*”

The focus on schemes with ghost companies may also support developing countries applying provisions, either in the internal law or in double taxation agreements, to avoid abuses. This would be especially helpful when involved parties appear to be unrelated because, if the scheme is not unveiled, such situation would not be covered by otherwise applicable provisions, such as CFC and transfer pricing regimes.