

8th BRICS Summit - Sharing Best Practices on International Tax and Financial Transparency

Policy Submission to Ministry of External Affairs

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Centre for Budget and Governance
Accountability
(www.cbgaindia.org)

Subject: ‘Sharing a few Best Practices on Financial Transparency Measures for Curtailing Black Money and Cooperation on International Tax Matters’

Context

BRICS countries represent 40 per cent of the world’s population and almost 17 per cent of the world trade. However, the BRICS countries continue to lose revenue through tax evasion practices employed by multi-national corporations (MNCs) and big businesses. The issue of illicit financial flows (IFFs)¹ or black money is urgent and complex, that concerns authorities all across the world. In 2015 alone, developing countries all across the world lost over \$1.1 trillion to IFFs. The **institutionalized cooperation of BRICS** could offer an alternative to the OECD standards to reform the international taxation architecture.²

We heartily welcome the crucial role played by Government of India (GoI) in furthering the role of transparency in the global financial system on international platforms such as the United Nations (UN), G20 and the Organisation for Economic Cooperation and Development (OECD). We also congratulate GoI’s leadership with regard to India becoming one of the early adopters of the Automatic Exchange of Information (AEOI) and Base Erosion and Profit Shifting (BEPS) standards to address tax evasion. As a part of the BRICS and the G77, India has supported the demand for an intergovernmental tax body under the auspices of the UN.

In reference to the annual BRICS Summit to be held on October 15-16, 2016, we are writing to you to highlight some of the best practices regarding some of these issues:

Automatic Exchange of Information

1. Collecting information on residents from all jurisdictions:

There is a necessity to collect information on residents from all jurisdictions and share it with adjudicating authorities, rather than to do it only for jurisdictions that have adopted the AEOI framework. The benefits in adopting this approach are:

- a. *For simplicity*: Financial institutions treat all account holders in the same way, and all information is passed onto tax authorities. The authorities do not need to keep updating lists, guidelines and legislations to require information from residents of new countries to be collected and/or submitted.

¹ Illicit financial flows are funds that are illegally earned, transferred or utilized.

² http://www.internationaltaxreview.com/pdfs/special-reports/brics-special_jan2013.pdf

- b. *Simplifies the integration of new countries*: If all necessary information is already collected, integrating new countries into the AEOI standard will be easier, with data available immediately.
- c. It will enable research and analysis to be done on the size, composition and changes in the offshore financial markets. The data on offshore assets is significantly scanty currently.

2. Collating and publishing aggregate statistics:

There is a lack of high quality data on the size and composition of the offshore financial markets. As a result, estimates on the size of offshore assets in secrecy jurisdictions and tax havens range between \$7 and \$32 trillion. There is a need to improve statistics and enable better research. If information is collected for all account holders, the data would be available for authorities to aggregate it into “totals” by country of residence, without identifying any individual or entity account holder (and so would not cause any concern over confidentiality), but would be able to show, for example, the size of assets and number of accounts held by residents from each jurisdiction in the world.

Country-by-Country Reporting by MNCs

The BEPS Action 13 mandates MNCs with an annual consolidated revenue of 750 million euros (or Rs. 5,300 crores) to provide details regarding revenue, profit and loss before tax, tax paid, stated capital, number of employees and tangible assets on a country-by-country basis to their respective tax authorities.

Research shows that only 45-47 Indian companies or subsidiaries of MNCs located in India would be required to report their data on a country-by-country, disaggregated basis at the current threshold of Rs. 5,300 crores. We would therefore request you to consider lowering the threshold at which companies would be required to report their data on a country-by-country basis, so as to include more companies in the net.

Beneficial Ownership

One of the most common ways in which companies obscure ownership is by appointing representatives, nominees, proxies or agents to represent the beneficial owner (BO)³, while hiding the true BO's identity. These proxies are persons in charge of a company only on paper and not in

³ “Beneficial owner’ is defined as any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.” (European Parliament, Anti-Money Laundering Directive-IV).

practice, therefore making it crucial to establish public registries of beneficial owners. It is also important to identify the true BO through means other than shareholding ownership.

There is a need to lower the current threshold of twenty-five per cent ownership of shares in a company to be recognized as a beneficial owner. An individual wishing to remain anonymous would only need to appoint three individuals to represent themselves as BOs of a company to dilute their stated ownership interest to twenty per cent, or lesser. The presence of a twenty-five per cent threshold is vulnerable to abuse and should be lowered to ten per cent.

Reforming the International Financial Institutional Architecture

International tax norms are currently designed by the OECD and the G20. Most developing countries therefore, do not have the policy space to shape international tax standards that affect them directly.

The then Minister of State for Finance, Mr. Jayant Sinha stated at the Third International Conference on Financing for Development (FfD) in July 2015:

“In today’s interconnected world, tax policy is a global public interest, having ramifications far beyond national borders. Greater information exchange is good, but not a substitute for genuine and equitable multilateralism in deciding global norms and standards on taxation. If this is truly a universal agenda, then all of us must have an equal seat at the table to legislate on global issues. The lack of an ambitious decision on upgrading the UN Committee of Experts on international cooperation on tax matters into an intergovernmental body, in our view, is a historic missed opportunity.”

We would therefore request that the BRICS Summit be an opportunity for BRICS countries to reaffirm their position on the UN intergovernmental tax body, for a genuinely inclusive, democratic platform.

We would be glad to provide further information on these issues.

(For further information on these issues, please contact us at sakshi@cbgindia.org or neeti@cbgindia.org or at 011-4920 0400 / 401 / 402).