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

Assessment Report

Benin

2022

Executive Summary

The *Base Erosion and Profit Shifting Assessment Tool* (B.A.T.) is a tool developed to support countries that wish to:

- assess the strengths and weaknesses of their tax system and tax administration with respect to international tax avoidance through base erosion and profit shifting (BEPS), including (but not limited to) the OECD/G20 BEPS Actions;
- identify possible measures to address base erosion and profit shifting issues considered to be more problematic, including possible actions and capacity building to implement these measures; and
- identify possible prioritization of these issues and/or measures.

The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) commissioned the development of the B.A.T. to the IBFD, a 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, which provided valuable insight for the development of the B.A.T. and the B.A.T. assessments in Zambia and Benin.

The B.A.T. assessment is based principally on a comprehensive questionnaire answered by key officials of the tax authorities and in-country interviews with these officials in order to clarify and/or elaborate on their answers and gather evidence to validate the B.A.T. if necessary. In addition, the B.A.T. assessment requires the analysis of general country-specific information. For the purposes of B.A.T., the expression "tax authorities" of a country encompasses the tax policy authorities, authorities in charge of drafting legislation and/or tax administration authorities. Therefore, in the case of Benin, the term "tax authorities" refers to both the Ministry of Economy and Finance (MEF) and the Benin Directorate General of Taxation (DGI). Accordingly, the written questionnaire responses and oral responses during the country visit were provided by DGI, which kept close contact with the MEF tax authorities. The latter also participated in the final session of the visit to the country. Questionnaire responses and interviews remain strictly confidential. The IBFD only shares this information and the B.A.T. report with other entities or governments if the Beninese tax authorities expressly authorize it.

A first questionnaire was sent to the Beninese tax authorities in 2020, who responded it. In addition, preliminary online interviews were scheduled with the tax authorities but were postponed due to the pandemic. In 2022, a new questionnaire (in which experiences from the evaluation of B.A.T. in Zambia and relevant changes to performance indicators were included) was sent out in June and answered in July. The visit to the country took place from 2 to 5 August.

The B.A.T. report presents the results of the B.A.T. evaluation carried out in Benin. This evaluation comprises five key areas, which were assessed on the basis of performance indicators considered essential to assess a country's current situation with regard to base erosion and profit shifting measures. Based on this assessment, the B.A.T. report provides some conclusions and possible measures regarding base erosion and profit shifting that are suggested for consideration of the Beninese tax authorities, as well as possible actions to implement these measures and training needs and assistance. Finally, a possible priority setting concerning base erosion and profit shifting is suggested to the Beninese tax authorities for consideration.

The main conclusions and suggestions contained in this report are as follows:

(1) The Benin tax authorities have not yet specifically identified in the government's strategy documents the problems of international tax avoidance through base erosion and profit shifting and measures to address them. In the current documents, they have only indicated in a very general way their intention to strengthen national and international cooperation, including, among other things, the signing of information exchange agreements with administrations and foreign organizations. We suggest that (i) the government's (international) tax avoidance strategy be stated in a more specific and structured manner; (ii) future strategy documents also refer to progress made; and (iii) these strategy documents are properly communicated to all relevant stakeholders.

(2) Benin joined the Inclusive Framework in 2016; therefore, priority must be given to the implementation of all BEPS Minimum Standards to which the IF members committed themselves within the set deadlines.

Compliance with these standards is peer reviewed by the Inclusive Framework. Benin's current status of compliance with these standards is as follows: [1]

(i) Harmful tax practices (BEPS Action 5):

(a) Preferential regimes: Benin currently complies with the BEPS Minimum Standard regarding preferential tax regimes, as the country does not have regimes with harmful features, as acknowledged by the Forum on Harmful Tax Practices (FHTP).

(b) Exchange of information on tax rulings: The tax authorities state that Benin cannot issue relevant tax rulings and that no such tax rulings have been issued. However, the Peer Review report states that Benin is not yet compliant with the BEPS Minimum Standards as regards the exchange of tax rulings, and also provides that Benin needs to take steps to implement the legal basis of the transparency framework and initiate administrative procedures to ensure that it finalizes its information-gathering process and that information on relevant tax rulings (if issued) is identified and exchanged.

(ii) Prevention of treaty abuse (BEPS Action 6): Benin's Treaty Model is not yet fully compliant with the BEPS Minimum Standard, nor are they fully adopted in all its existing tax treaties.

(iii) Country-by-country (CbC) Reporting (BEPS Action 13): According to the tax authorities, Benin does not have multinational enterprise (MNE) groups headquartered in its jurisdiction that would be obliged to provide CbC reports. A yearly certification process should be put in place to determine Benin's compliance with this standard. However, in order to receive CbC reports from foreign multinational enterprises operating in Benin, Benin must implement all necessary legislative, administrative and technological requirements, as if a MNE headquartered in Benin were required to file CbC reports. According to the peer review report, Benin is not yet fully compliant with these requirements.

(iv) Effective Tax Treaty Dispute Resolution (BEPS Article 14): Benin has not yet included all the required elements in its Treaty Model nor in all its tax treaties. In addition, it must adopt the necessary domestic legal and administrative framework and ensure the practical implementation of the BEPS Minimum Standard. The tax authorities must initiate the analysis and evaluate the measures required and plan accordingly.

With regard to the order of implementation of the BEPS Minimum Standards, if they cannot be implemented simultaneously, and given the lack of data to quantify the budgetary effect of each of these standards, the following order seems to be the priority:

(i) fully implement CbC reporting obligations (BEPS Action 13) in order to be able to benefit from receiving information from other countries in the context of transfer pricing;

(ii) comply with the requirements necessary to receive tax rulings from the tax authorities of other countries (BEPS Action 5);

(iii) (re)negotiate relevant tax treaties to comply with BEPS Action 6 Minimum Standard (i.e. adopt the new Preamble and the principal purpose test rule (PPT) and/or limitation of benefits rule (LOB); and

(iv) comply with the BEPS Action 14 Minimum Standard (i.e. (re)negotiate relevant tax treaties and adopt a domestic and administrative framework to carry out mutual agreement procedures (MAPs)).

(3) We identify as a major constraint the lack of data to measure and monitor base erosion and profit shifting issues (BEPS Action 11 recommendations). This data would be very important for the country to be able to determine which issues are most relevant to its particular situation.

[1] For the sake of completeness, it should be noted that B.A.T. evaluation cannot in any way be considered as the OECD/Inclusive Framework Peer Review.

(4) 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 or medium term and, subsequently, work on new measures that may also be very relevant for Benin from the point of view of protecting the existing tax base and the more broader domestic resource mobilization.

(i) First, the issues on which Benin has already started measures (which have also been identified by the international community as relevant to developing countries):

(a) countering abuse of base-eroding payments: effectively apply existing provisions and the new rule on limitation on interest deductibility and evaluate its effectiveness. In addition, the relevance to Benin of the other recommendations of BEPS Action 4 should be examined;

(b) countering abuse of transfer pricing: verify whether the necessary elements of BEPS Actions 8-10 and the Platform for Collaboration on Tax Matters (PCT) toolkit to address the difficulties related to the lack of comparables data in transfer pricing analyses have been effectively included in the domestic legislation, and gather the necessary knowledge and experience to apply effectively these principles through audits (ensuring that MNEs comply with these new standards);

(c) countering abuse of tax treaties: continue reviewing the country Treaty Model and (re)negotiate treaties to include relevant anti-abuse provisions (BEPS Actions 6 and 7); and

(d) protecting the domestic tax base against its progressive erosion by the digitalizing economy: effectively implement and evaluate the effectiveness of measures already taken (e.g. value-added tax (VAT) measures, taxation of foreign traders who sell oil in Benin from abroad "digitally" and consumption tax on payments for telecommunication services) and conduct an overall assessment of the effects of the digital economy, and participate in (and monitor the progress of) the work done in the Inclusive Framework on the Two-Pillar Solution, in order to be able to respond to these developments as soon as possible.

(ii) Subsequently, with respect to other relevant issues related to base erosion and profit shifting:

(a) reviewing existing tax incentives based on the recommendations of the PCT toolkit on the effective and efficient use of investment incentives; and

(b) examining whether countering indirect transfer of assets is relevant for the country and, if so, what measures can be taken to protect the tax base.

(5) In terms of staff expertise, the relevant units in charge of international taxation of the DGI are staffed by officials with a general academic background (BAC +3 or BAC +5) and a degree of experience on domestic taxation, but in this general academic education very little is included in the area of international taxation, taking into account the increased complexities of legislation and implementation rules. Thus, it seems that the current level of education and training to deal with these increasingly complex measures is not sufficient. It is therefore recommended to invest both in the operational training of existing staff in these for them new areas, and also to invest in a higher specialised academic knowledge on international taxation by having a number of selected staff participate in specialized postgraduate master programmes in international tax law.

In order to consolidate and strengthen knowledge and promote interaction among international tax specialists, consideration may be given to introducing a train-the-trainer approach and establishing a tax academy within DGI and a more specialized (international) tax library.

Finally, it appears that some departments may not be sufficiently staffed to deal adequately with all these new and complex tasks.