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*Business at OECD* (BIAC)

# Statement of Best Practices for engaging with tax administrations in developing countries

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# Background and Purpose

- Originally launched in 2013, and updated in 2022, the *Business at OECD* (BIAC) Tax Best Practices are intended to support responsible business tax management and to enhance co-operation, trust and confidence between tax authorities in developing countries and international business. Business recognizes that raising tax revenues, multilateral multi-stakeholder dialogue and co-operation are critical foundations to advancing effective domestic resource mobilization, and towards achieving Sustainable Development Goals. Accordingly, the Best Practices also intend to support capacity building, tax morale and co-operation, all of which enhance opportunities for developing country tax authorities to efficiently and effectively deliver their goals. This will enhance trust in the effectiveness of compliance and tax administration, with the aim of fostering cross-border trade, investment and sustainable growth for the benefit of all.
- The updated *Business at OECD* (BIAC) Tax Best Practices reflect input from international businesses across sectors and regions. They have been designed with the aim of improving mutual trust between taxpayers and tax authorities, by providing an aspirational framework to guide businesses activities and interactions with tax authorities when setting and delivering their tax strategies and tax governance frameworks. In this context, they are not to be viewed as "minimum standards". The *Business at OECD* (BIAC) Tax Committee recognizes that mutual trust between business and tax authorities requires co-operation from both sides and believes the Best Practices can also serve as a useful and important reference for tax authorities to understand and engage with the business community and with individual businesses on their tax strategy and governance frameworks.
- The Best Practices should be considered specifically by businesses for engagements with tax authorities in developing countries but should also be read alongside the broader *Business at OECD* (BIAC) "Tax Principles for International Business", which apply to such interactions.
- *Business at OECD* (BIAC) encourages member federations and businesses, and the broader taxpayer community to implement the Best Practices, and for tax authorities to use the Best Practices as a reference point to enhance transparency, dialogue and co-operation with multinational enterprises.

# Overview of the Best Practices

Governance

**1** Businesses should follow established and agreed-upon procedures and channels when dealing with tax authority officials.

**2** Businesses should make the payment of their tax liabilities within established due dates.

**3** Businesses should recognize the capacity challenges that tax authorities in developing countries may face, including in how the business resources its own tax functions, how they approach engagement with tax authorities, and how they may look to provide assistance.

**4** Businesses should not engage in bribery, corruption or tax evasion and should take proportionate steps to mitigate any related risks.

Trust and compliance

**5** Businesses should seek to build trusted relationships with tax authorities.

**6** Businesses should co-operate with tax authorities and respond in a timely fashion to enquiries.

**7** Businesses should not undertake transactions whose sole purpose is to create a tax benefit, which is in excess of the reasonable interpretation of relevant tax rules, or use artificial arrangements, structures or contracts to reduce their taxes, nor should they utilize tax incentives or exemptions inappropriately.

**8** Where businesses engage in public policy advocacy on tax, they should seek to shape future tax policy and legislation in ways that create shared value in enhancing a transparent and constructive relationship with tax authorities.

Transparency

**9** Businesses should be open and transparent with tax authorities, by providing as much relevant information as possible to help to address queries or issues in an efficient manner.

**10** Business should recognize the interest of their stakeholders and the public in their tax affairs, and should provide relevant public information on their economic contribution and taxes paid.

# Best Practices - Commentary

## 1 Businesses should follow established and agreed-upon procedures and channels when dealing with tax authority officials.

- Jurisdictional legal and cultural procedures and practices vary widely, and established and agreed-upon procedures and channels may vary between countries or even within country for different taxpayers or categories of taxpayer (e.g., Large Businesses). Established and agreed-upon procedures may be complex in relation to different types of taxes, or in relation to domestic vs international mechanisms (e.g., Mutual Agreement Procedures, Advanced Pricing Agreements). Businesses should ensure that they are aware of and are acting in accordance with procedures that are in line with the law. Where the law gives flexibility to taxpayers or tax authorities in the procedures that may be agreed upon, businesses should seek to ensure transparency and clarity in what is agreed and what is expected from all parties.
- *Business at OECD* supports the implementation of co-operative compliance regimes as a mechanism to enhance trust (see Best Practice 5) but recognizes that good governance around equitable and efficient operation of the regime to ensure it enhances trust in the system is essential.

# Best Practices - Commentary

**2** Businesses should make the payment of their tax liabilities within established due dates.

- Typically, there are legal requirements to pay taxes within a specified time period, and businesses should of course meet these legal requirements. Where such requirements are not established in law, businesses should still make tax payments within a reasonable timeframe. Where extensions are offered (e.g., in relation to crises) business should recognize that this may add cost or resource pressure to tax authorities, and should only accept the extensions where there is a commercial or financial business need to do so.
- The taxes themselves (and / or any penalties / interest) payable to a country may not be material to a large MNE, but timely receipt may be critical to the recipient developing countries, who are typically more reliant, in comparison to developed countries, on corporate and other business taxes as well as taxes from inward investors.
- This should be recognized by businesses; for example:
    - Where taxes due are reliant on estimates, the MNE should ensure that the underlying calculations are appropriately accurate.
    - Where payment amounts are disputed, any related but undisputed amounts should be paid as soon possible, to the extent that this can be done legally without prejudicing the business' position in relation to the dispute. In line with Best Practices 6 and 9, the business should seek to ensure that the dispute is resolved as soon as possible and then promptly pay any outstanding taxes due.

# Best Practices - Commentary

3 Businesses should recognize the capacity challenges that tax authorities in developing countries may face, including in how the business resources its own tax functions, how they approach engagement with tax authorities, and how they may look to provide assistance.

- Developing country tax administrations are often resource-constrained and may not have the same level of capacity, business/industry knowledge and expertise as businesses themselves or as the tax authorities in developed countries. It may also be the case that the business' activities in developing countries are less material to a large multinational than in other countries, and there may be a smaller pool of qualified professionals and advisers to engage with.
- While MNEs may also be resource-constrained and thus may not be in a position to dedicate the same resources (or level of resource) to all countries, when planning resource requirements for compliance and governance, businesses should consider the impact on developing countries' tax administrations and their own ability to effectively and efficiently manage tax administration and achieve certainty to the benefit of all stakeholders. This may include (for example):
    - Ensuring that there is an appropriate balance between global and localized processes and standards that can satisfy the governance expectations of the business and the tax authority.
    - Ensuring that sufficiently senior and qualified resources (including service providers) are deployed in managing their tax compliance (and other tax function) requirements.
    - Recognizing the impact on tax authorities' capacity of employing resources from a small pool of tax professionals.
    - Recognizing the potential differences in language or culture between the organization and local stakeholders.
    - Ensuring that where service providers are engaged, they are aware of the broader tax governance requirements and tax strategy of the business.
    - Being prepared to invest time and resources in explaining the key features of a particular industry or a project in the country to the tax authorities to enhance their understanding of tax features specific to this industry or project and to enhance their appreciation of the investment cycle and associated tax revenues.
- Businesses should also consider if and how it is appropriate and efficient for them to contribute towards capacity building programs in developing countries.

# Best Practices - Commentary

4 Businesses should not engage in bribery, corruption or tax evasion and should take proportionate steps to mitigate any related risks.

- Tax evasion is a term generally used to mean illegal arrangements where a liability to tax is hidden or ignored (i.e., the taxpayer pays less tax than they are legally obligated to pay by hiding income or information from the tax authorities) and generally lead to administrative and criminal liability. Businesses should never engage in tax evasion.
- Good corporate governance extends beyond behavior in relation to tax or with tax officials, but businesses should ensure that the corporate governance standards they apply to counter illegal activity such as bribery and corruption also extend to cover their tax affairs and engagement with tax authorities and public officials in relation to tax matters.
- *Business at OECD* (BIAC) supports the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Businesses should follow the principles contained in Chapter VII of the OECD Guidelines for MNEs.
- Businesses should also consider what procedures they could implement to ensure that they and their agents do not deliberately or inadvertently facilitate tax evasion (or other illegal activity) by their stakeholders.

# Best Practices - Commentary

## 5 Businesses should seek to build trusted relationships with tax authorities.

- The OECD recognizes that while "improving the relationships between taxpayers and administrations should reduce disputes, it will not eliminate them. Improved trust however should enable disputes to resolved, with all parties accepting the validity of differing positions, and crucially the results, without it affecting the willingness to maintain a positive relationship." [Tax Morale II, OECD, 2022].
- Formal Cooperative Compliance relationships provide benefits to both taxpayers and tax administrations. Entering into such programs or pilots (where available) can help build a deep trusted relationship and create a virtuous circle, but a base level of trust is required at commencement for the programs to deliver these benefits. Even where formal Cooperative Compliance programs do not exist, trusted relationships can benefit all parties. This could include for example regularly and proactively engaging with tax authorities and seeking to resolve any uncertainty in the interpretation of the tax laws directly with tax authorities, including through advance tax agreements.
- Business should recognize that while building trust requires commitment and good faith actions from both sides, their actions and behaviors can have a positive influence even where a trusted relationship has not yet been fully developed. This can help to both build trust between the business and tax administrations, and to build trust in the tax system more broadly. Proactive steps to build trust should be furthered by demonstrating behavior in line with these Best Practices, including particularly seeking to achieve early agreement on disputed issues and certainty on a real-time basis, wherever possible.

# Best Practices - Commentary

## 6 Businesses should co-operate with tax authorities and respond in a timely fashion to enquiries

- Where questions or assessments from tax authorities are agreed by the business to be in line with the law, businesses should make best efforts to comply with the requests.
- Where compliance is not possible or it would be onerous (for example, where time limits to respond are short, where the requested data does not exist in the required format or at all, or where requests are received at times when the business has other competing priorities such as statutory reporting obligations), businesses should work with the tax authority where possible to explain the challenges they face and explore alternatives, such as an extension to the deadline to comply, or the provision of different data that is more readily available. It is legitimate for businesses to ask why the request is being made, and understanding this may be helpful in prompting dialogues and exploring alternatives that could better help the tax administration meet its objectives.
- If questions or assessments from tax authorities appear not to be in line with the law, businesses should work with the tax authority where possible to understand the nature and purpose of the requests, to identify the relevant issues and explore options to resolve misunderstandings.

# Best Practices - Commentary

7 Businesses should not undertake transactions whose sole purpose is to create a tax benefit, which is in excess of the reasonable interpretation of relevant tax rules, or use artificial arrangements, structures or contracts to reduce their taxes, nor should they utilize tax incentives or exemptions inappropriately.

- A disagreement over the interpretation of a law is not a loophole. It is common for different stakeholders (sometimes even different countries' tax administrations) to disagree on the interpretation of laws. Often laws are ambiguous, or the policy intentions may be unclear, particularly with regard to situations that policymakers did not foresee when drafting the law (e.g., where new business activities evolve over time). However, businesses should not undertake transactions whose sole purpose is to create a tax benefit which is in excess of the reasonable interpretation of relevant tax rules, or use artificial arrangements, structures or contracts to reduce their taxes.
- Businesses should not take positions that they know to be against the objectives of policymakers (e.g., based on a reasonable interpretation of the legislation, legal precedent and parliamentary history). Where a business knows that it is taking a different interpretation of the law to a tax authority, it should openly engage in dialogue with the tax authority about this (see Best Practice 8).
- Businesses may utilize tax incentives and concessions where these are in line with business and operational objectives but should refrain from claiming or accepting exemptions, which conflict with or are not reasonably supported by the relevant statutory, regulatory, or administrative framework related to taxation, financial incentives, or other issues.

# Best Practices - Commentary

8 Where businesses engage in public policy advocacy on tax, they should seek to shape future tax policy and legislation in ways that create shared value in enhancing a transparent and constructive relationship with tax authorities.

- Governments are responsible for their fiscal policy and resulting laws. Businesses should respect the roles and responsibilities of the governments, institutions and organizations that they engage with.
- Businesses may engage in public policy advocacy with a range of stakeholders (e.g., international organizations, governments, tax authorities, and civil society) and through various channels (e.g., directly, or indirectly through industry associations, business associations, and less formal coalitions). The experiences and views of business may differ from those of other stakeholders and are thus critical to the development and implementation of tax policies that are efficient, administrable, and meet their stated objectives, as well as understanding the broader economic and societal impact of those objectives. Engagement in public policy by businesses is not bribery.
- Where engaging in advocacy, such groups or businesses should be clear and consistent in their objectives across their stakeholders, including any concerns they have regarding the policy objectives in question, or the best ways to achieve stated policy objectives. Businesses should seek to create "shared value" by informing policymakers of the direct and potential indirect impact of policy proposals or choices, and seek opportunities to develop and support policies that meet policymakers' objectives in ways that also create positive value (or diminish negative outcomes) for business and other stakeholders.
- Transparency from businesses in respect of their objectives and approach to advocacy may help improve perceptions of such activity and build further trust in tax systems. Businesses recognize that any advocacy should not improperly influence decisions and should never be misused for any corrupt or illegal purpose.

# Best Practices - Commentary

9 Businesses should be open and transparent with tax authorities, by providing as much relevant information as possible to help to address queries or issues in an efficient

- Businesses should provide all relevant information to tax authorities to enable them to assess taxes due (and, where applicable, complete audits – see Best Practice 6). This could include information about the activities undertaken in the country, the broader global value chain, and relevant transfer pricing analyses (including information held in other jurisdictions where relevant).
- Where documentation is requested in line with OECD standards (e.g., Master File and Local Files), businesses should provide this. Businesses should consider providing such information to tax authorities even in countries that do not have a legal basis for requesting it, if it will facilitate their understanding of the business and its tax profile. Where local documentation requirements exist that are not in line with global standards, businesses should engage with tax authorities to understand why such information has been requested and whether the tax authority could be satisfied with more standardized information, or relevant information in a different format that may be easier for the business to obtain. Wherever possible, MNEs should seek to implement governance procedures that ensure that teams dealing with tax administrations in developing countries are aware of the challenges and the business' global commitments with regard to such challenges.
- In some cases, there may be legal or commercial barriers to providing information to a tax authority, for example the provision of data from foreign operations, in different languages, or where activities have different shareholders meaning it is not available or agreements are in place meaning it cannot legally be shared. MNE's should have governance (see Best Practice 1) to ensure that local operations and tax administrations have as much relevant data available to them as is permissible in line with legal and commercial constraints (for example, consider engaging with other shareholders to see if information may be shared). If it is still not possible to provide the relevant information, businesses should engage with tax authorities to explore if other data sources may be available that may meet their needs.
- Businesses will have competing obligations to consider the safeguarding of their confidential information. Information they provide could be used inappropriately if the tax authority's governance and security protocols are insufficient. While such concerns may not override legal requirements, they are a legitimate factor for businesses to consider. Businesses should be transparent about these concerns, and seek to build trust, as well as encouraging (and supporting) best practice systems and processes that might alleviate these concerns.

# Best Practices - Commentary

10 Business should recognize the interest of their stakeholders and the public in their tax affairs, and should provide relevant public information on their economic contribution and taxes

- As well as the extensive requirements for tax data to be published and audited in formats prescribed by accounting standards, increasingly, multinational businesses face country or regional level legal requirements to publish information on their global tax footprint (e.g. EU Accounting Directive and Canadian ESTMA requirements on extractive business' payments to governments, EU Capital Requirements Directive requirements on financial institutions' country level tax payments, and EU Country by Country Reporting requirements from 2024). Alongside these requirements, a range of voluntary global standards have emerged to provide stakeholders with additional tax information, such as WEF and GRI 207.
- Recognizing that transparency can help build trust in the tax system, businesses should consider how their stakeholders are served by mandatory requirements, and if and how they could be further served by adopting voluntary standards. This may include financial data and/or non-financial information such as information about how the businesses approaches tax governance.

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