

BASE EROSION AND PROFIT SHIFTING

BEPS issues for developing countries

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UN Subcommittee mandate

- Draw on the experiences of subcommittee members
- Engage with other relevant bodies (particularly the OECD)
- Monitor developments on BEPS issues
- Communicate issues with officials in developing countries:
 - especially least developed countries
 - directly with officials
 - indirectly through regional and inter-regional organisations

This communication informs developing countries on BEPS issues...

- Subcommittee Note on BEPS released this year shares information on BEPS explaining:
 - background and context
 - key causes of BEPS
 - how BEPS affects countries
 - BEPS Action Plan
- Sharing of information through workshops and forums

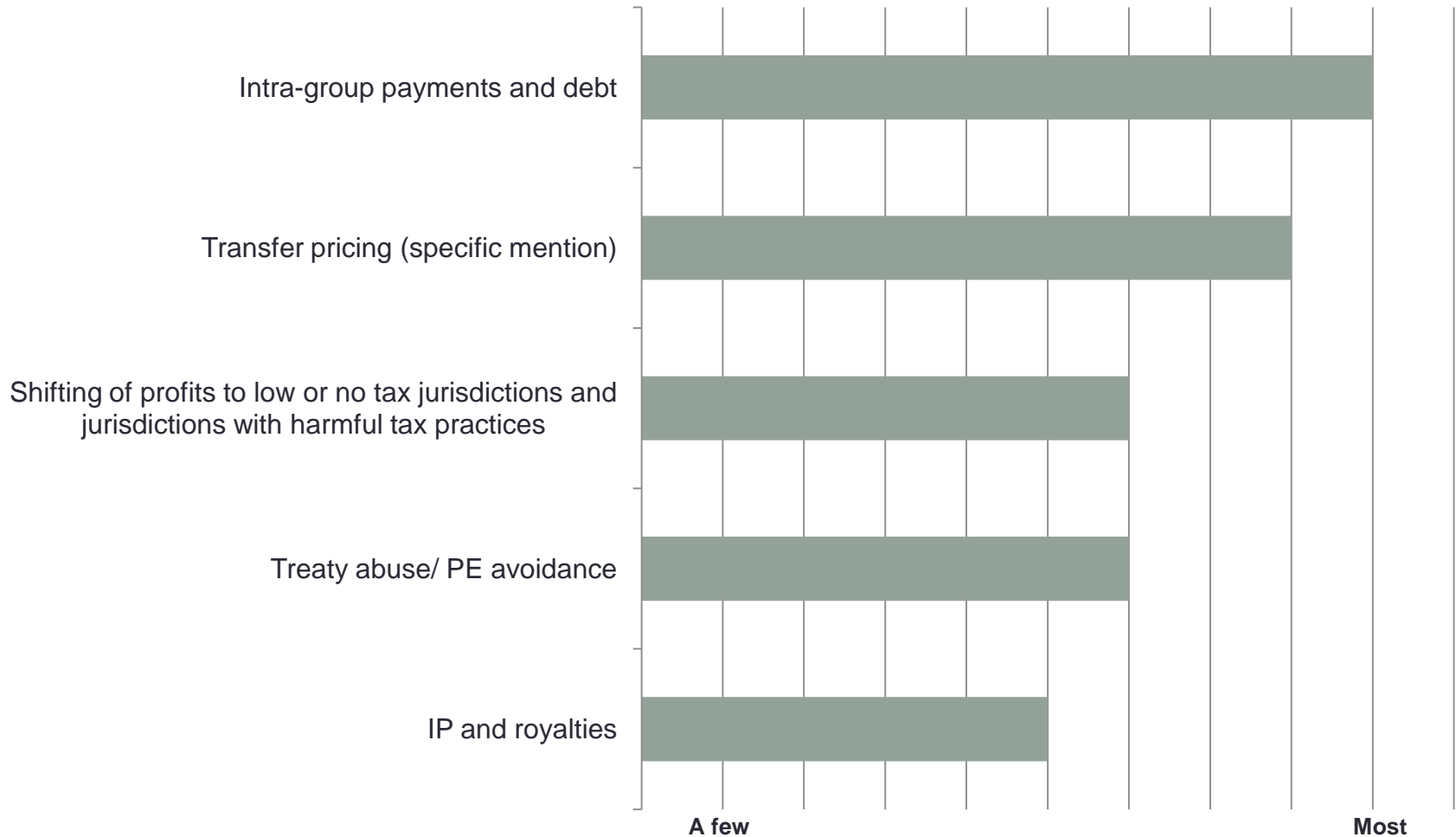
This communication facilitates the input of developing-country experiences ...

- Facilitate the input of developing country experiences and views into:
 - on-going UN work
 - the OECD/ G20 Action Plan on BEPS
- Subcommittee questionnaire on BEPS
- Dialogue through workshops and forums

Feedback from the questionnaire...

- Confirmed the importance of the UN effort to reach out to developing countries
- Most responses confirmed their BEPS priorities included:
 - base erosion using interest deductions/other financial payments
 - transfer pricing
 - disclosure of aggressive tax planning arrangements
 - methodologies for collecting data
 - treaty abuse

Common practices and structures affecting respondent countries



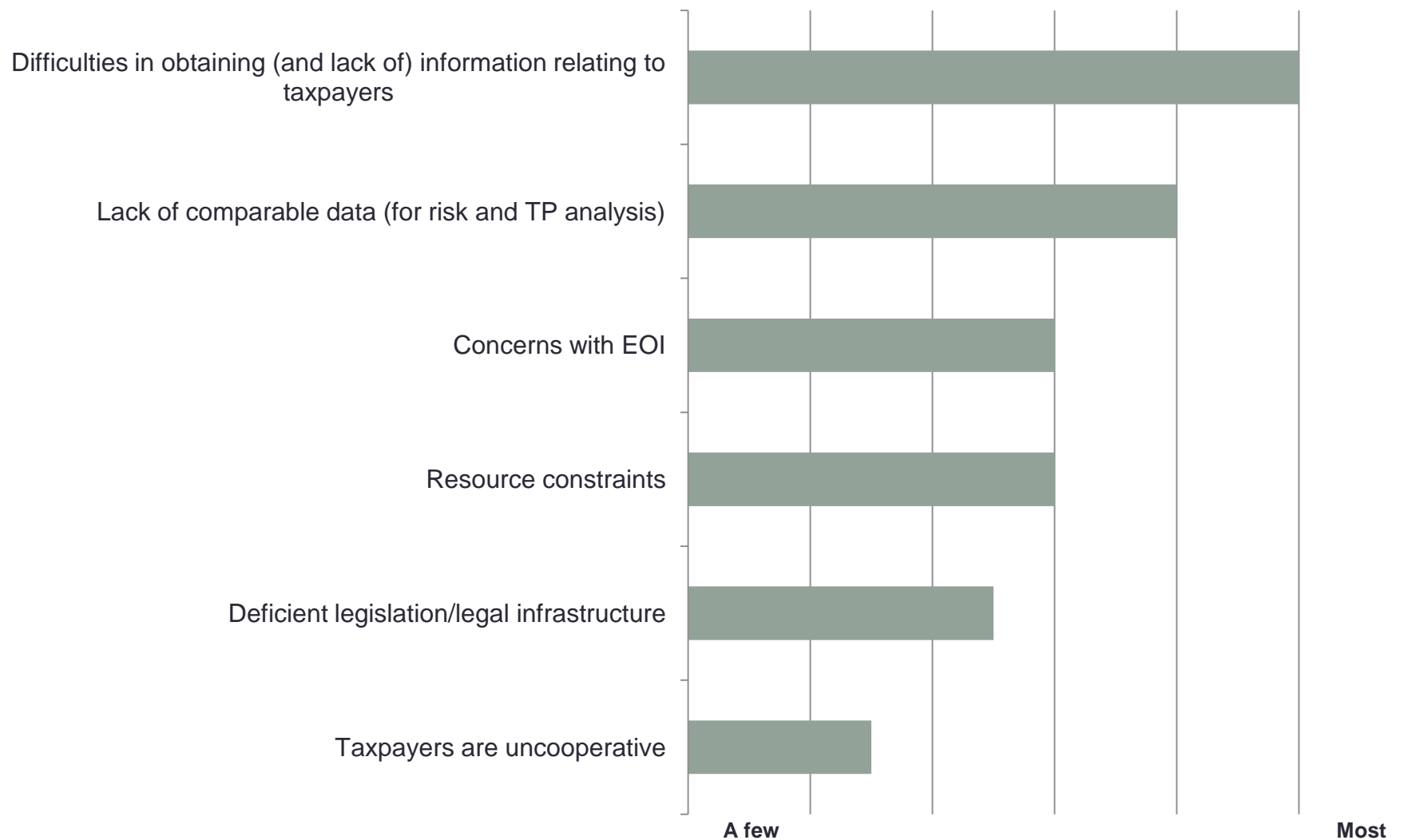
Other concerns

- Digital economy
- Offshore sale of tourism packages
- Sale of goods and services over the internet
- High net-worth individuals
- Abuse of tax incentives for new investment

Some responses to these practices and structures

- Enact TP legislation or strengthen existing TP legislation
- Amend VAT legislation
- Thin capitalisation rules
- Withholding taxes
 - technical services fees and royalties
 - Higher withholding rates on payments to low-tax jurisdictions
- Treaties
 - Reconsidering provisions
 - Renegotiate existing treaties
- GAAR and specific anti-abuse legislation
- Focus on human resources – build capacity and train staff

Main obstacles encountered



Parallel BEPS work

- New Article on Fees for Technical Services
- Work by the Committee since 2006
- October 2015 meeting
 - agreed text for new article
 - Cons text agreed
 - Future work by the subcommittee

Article XX - Fees for Technical Services

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article 14 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed ___ percent of the gross amount of the fees [the percentage to be established through bilateral negotiations].

3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institutions; or
- (c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with

- a) such permanent establishment or fixed base, or
- b) business activities referred to in (c) of paragraph 1 of Article 7.

In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article XX - Fees for Technical Services

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent establishment situated in that other State or the third State, or performs independent personal services through a fixed base situated in that other State or the third State and such fees are borne by that permanent establishment or fixed base.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Other potential approaches

- Capacity building was raised by seven countries
 - Training
 - Improving risk analysis tools
 - Technical assistance
 - Access to databases
- Other suggestions included OECD-produced guidelines on BEPS items or for MNEs, and getting MNEs to commit to not pursue BEPS strategies

Feedback from the questionnaire...

- Responses raised wider concerns for developing countries, including:
 - allocation of taxing rights as between source and residence
 - taxation of capital gains
 - AEOI
 - loss of revenue through tax incentives
- Responses requested on-going communication of developments with developing countries

Future work by Subcommittee?

- Are the recommendations by OECD/G20 suitable for UN members?
- Are there any important issues for developing countries that are not dealt with in the OECD/G20 report?