

IOTA Forum

Implementation of Measures to Counter Base Erosion and Profit Shifting (BEPS)

Group Discussion 2

Business Restructuring / Transfer Pricing



Question 1

How do you detect within your Tax Administration that a business restructuring has taken place? Please name all potential sources (tax return, CbCR, other sources). In your opinion, is the documentation explaining the rationale and the arm's length nature of the restructuring also coming from EOI sufficient?

FEEDBACK FROM GROUP 1 (red)

During the tax audit the latest
risk analysis – CBCR, master file, local file
Tax returns – some countries have a box that has to be
checked
Intercompany agreements
Financial statements
Other reporting like DAC 3, DAC 6
List of controlled transactions

Question 1

How do you detect within your Tax Administration that a business restructuring has taken place? Please name all potential sources (tax return, CbCR, other sources). In your opinion, is the documentation explaining the rationale and the arm's length nature of the restructuring also coming from EOI sufficient?

FEEDBACK FROM GROUP 2 (yellow)

- Tax return / self assessment and CbCR common sources. Annual accounts too. Information coming from other, tax , competent or registration, authorities. Sometimes also from media / newspapers.
Info from DAC3, 4 CbCR and 6 tax rulings. Local and Masterfile requested by TA to taxpayer and tax returns. Spontaneous EOI
- Not really, gives more an hints to ask then for more information.
EOI on request takes time and the information you receive is not always very useful
Spontaneous can be very useful to initiate an audit for e.g.

Question 2

What is your primary concern, and on which points do you usually focus, from a tax point of view, when a business restructuring takes place?

FEEDBACK FROM GROUP 1 (red)

- Change of profit level
- Reduction of expenses
- Change of Function
- Risks allocation
- Exit fee
- Preferential Tax Regime, Aggressive tax planning
- Timing issues
- DEMPE analyses
- Business reason

Question 2

What is your primary concern, and on which points do you usually focus, from a tax point of view, when a business restructuring takes place?

FEEDBACK FROM GROUP 2 (yellow)

- Functional analysis to understand the future structure (before and after)
- Understanding of involved transactions / evaluation / substance
- Changes on function and valuation

Question 3

Is it often to audit financial transactions during a Tax/ TP audit? What type of financial transactions do you usually deal with (loans, cash pooling, guarantees, others)? Do you follow an analytical procedure like the one described in Chapter X of OECD's Guidelines, or is this dependent on various factors (i.e. use of a standardized commercial database such as Moody's, Bloomberg, etc, amount of controlled transaction, lack of FSTP-Financial Services Transfer Pricing experts).

FEEDBACK FROM GROUP 1 (red)

Cash pooling, Loans, Facility loans
Hybrid Instruments
CUP method, Debt Reclassification
Financial Statements, Commercial Database
Thin cap
Threshold of the debt amount
Chapter X Guidelines
Dedicated experts on Financial Transactions
Internal Guidelines (handbooks) for Financial Transactions

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FEEDBACK FROM GROUP 2 (yellow)

- Yes, but may vary from jurisdictions. New trend for TAs thanks to new databases/tools available to TAs.
- Mostly loans and cash pooling
- Yes, follow OECD guidelines and database like Bloomberg or Moody's

Question 4

Do you focus on specific risk assessment cases regarding financial TP and if yes, could you provide some information?

FEEDBACK FROM GROUP 1 (red)

Debt/equity ratios, interest coverage ratio

Economic substance of transaction

No specific targeted sectors

The height of interest rate

Lending or borrowing position

Historical data of interest expenses

Question 4

Do you focus on specific risk assessment cases regarding financial TP and if yes, could you provide some information?

FEEDBACK FROM GROUP 2 (yellow)

- Thin cap, Annual financial outcome (negative), partner country for the transaction, substance in general, schemes based on specific domestic tax incentives